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SUPREME COURT OF THE UNITED STATES.

No. 176.

THE TOWN OF ORLEANS, PLAINTIFF IN ERROR,

vs.

NATHAN E. PLATT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 2, 1876.

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1 Circuit court of the United States in and for the second circuit and the northern district of New York, of June term, in the year one thousand eight hundred and seventy-four.

NEHEMIAH E. PLATT
vs.
THE TOWN OF ORLEANS.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Nehemiah E. Platt, of Chicago, in the State of Illinois, plaintiff, by W. & J. D. Kernan, his attorneys, brings this action against the town of Orleans, a municipal corporation existing in said district, in the county of Jefferson, in the State of New York, defendant, by the filing in the office of the clerk of said circuit court, at Utica, N. Y., this declaration, and causing a copy of the same, with notice to plead thereto, to be served upon said defendant; and for complaint and cause of action against the said defendant states and alleges as follows:

FIRST COUNT.—That the said plaintiff is a citizen of the United States and of the State of Illinois, and a resident of Chicago, in that State, and not a resident in the State of New York; that the said defendant, the Town of Orleans, was, at the times hereinafter mentioned, and is one of the towns of the county of Jefferson, in the State of New York, in said circuit, and a municipal corporation authorized by law to sue and be sued upon contract.

That heretofore, to wit, on the 18th of May, 1869, the legislature of the State of New York duly enacted a law entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads"; which act is designated and known as chapter 907 of the laws of the State of New York, enacted in the year 1869. That subsequently and prior to the making and issuing of the instruments hereinafter mentioned, the legislature of the State of New York duly passed certain other acts amending said act known as chapter 907.

That in and by said act, chapter 907, and the acts amending the same, it was enacted that whenever a majority of the tax-payers of any municipal corporation in the State of New York whose names appeared upon the last preceding tax-list or assessment roll of said municipal corporation as owning or representing a majority of the taxable property in the corporate limits of such municipal corporation should apply to the county judge of the county in which such corporation was situate, by petition verified by one of the petitioners, setting forth that they were a majority of such tax-payers and represented a majority of such taxable property, and that they desired that such municipal corporation should create and issue its bonds to an amount named in such petition and invest the same, or the proceeds thereof, in the stock of such railroad company in the State of New York as might be named in the petition, it should be the duty of the county judge to proceed and hear and decide such application as in said act directed; and that if said judge should adjudge and determine that such petitioners did represent a majority of such tax-payers and a majority of such taxable property, it should be his duty forthwith to appoint and commission three persons to be commissioners for the purposes named in said act. By the said acts it was and is further enacted that it should be the duty of the commissioners so appointed to make and issue the bonds of the municipal

corporation, payable at the end of 30 years from their date, bearing interest at the rate of seven per cent. per annum, payable semi-annually, with coupons or interest warrants annexed, corresponding in number and amount with the several payments of interest to become due thereon, to an amount not exceeding the amount named in the petition and provided in said act; and the commissioners were empowered and directed to subscribe in the name of the municipal corporation which they represented to the stock of the railroad company named in the petition to the county judge, to an amount equal to the amount of the bonds made and issued by them, and to pay for the same by exchanging the bonds therefor at par, or to sell the bonds at not less than par and invest the proceeds in such stock.

That prior to the making and issuing of the bonds of the defendant hereinafter mentioned, the Clayton & Theresa Railroad Company was organized and incorporated under and by virtue of the laws of the State of New York, to construct and operate a railroad in the State of New York extending through the said town of Orleans. That after the passage of said act above mentioned and before the making and issuing of the bonds and coupons hereinafter mentioned, application was duly made by the tax-payers of said town of Orleans, to the county judge of the said county of Jefferson, by petition duly verified, setting forth that the petitioners were a majority of the tax-payers of said town of Orleans, whose names appeared upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in said town, and that they desired that said town should create and issue its bonds to the amount of eighty thousand dollars, and invest the same in the stock of said Clayton & Theresa Railroad Company; and such proceedings were thereupon had by and before said county judge that he afterwards, to wit, on or about July 1st, 1871, did adjudge and determine that such petitioners did represent a majority of such tax-payers and taxable property of said town as aforesaid. And the said county judge did then and there, to wit, on or about July 1st, 1871, appoint and commission George H. Strough, Samuel W. Gates, and Simon Folts, three freeholders, residents and tax-payers of and within said town of Orleans, to be commissioners of and for said town for the purposes named in said acts of the legislature. The said commissioners duly qualified and entered upon the duties of their said office, and afterwards the said commissioners did subscribe for and in the name of said town of Orleans to and for eight hundred shares of the stock of said Clayton & Theresa Railroad Company, amounting at the par value thereof to $80,000.

And the said commissioners above named then and there, to wit, on the 15th of February, 1872, to wit, at La Fargeville, in the said town of Orleans, in pursuance of and by virtue of said acts, did duly make and execute for and in behalf of said defendant one hundred and forty of the bonds of the said defendant, which bonds were severally duly signed and certified by said commissioners as directed by the said act. That said bonds were numbered from and including No. 21 to and including No. 160; and that each was duly registered in Jefferson County clerk's office on or about April 3d, 1872. That attached to each of said bonds were interest warrants or coupons for the amount of the semi-annual interest secured and agreed to be paid upon the principal of each of said bonds; and that the following is a substantial copy of each of said bonds, except the numbers thereof respectively, and the coupons annexed, viz:

(Copy of bond.)

UNITED STATES OF AMERICA.

No. .] STATE OF NEW YORK, TOWN OF ORLEANS. [$500.

In aid of the Clayton & Theresa Railroad Company.

(Issued by virtue of chapter 907 of the laws of the State of New York, passed May 18, 1869, and of the several laws amendatory thereof.)

Know all men by these presents that we, George H. Strough, Samuel W. Gates, and Simon Folts, commissioners under the acts above referred to for the town of Orleans, in the county of Jefferson, and State of New York, upon the faith and credit, and in behalf of the said town, and confirmed by a majority of the tax-payers representing a majority of the taxable property of the same, according to the said acts, for value received do hereby promise to pay to the bearer hereof the sum of five hundred dollars, on the fifteenth day of February, in the year one thousand nine hundred and two, at the Metropolitan Bank, in the city of New York, redeemable, nevertheless, at the option of the said commissioners, or their successors, on the fifteenth day of February or August, in any year after the year 1892, with interest at seven per cent. per annum, payable semi-annually, on the fifteenth days of February and August in each year, at the same place above mentioned for the place of payment of the principal, on presentation and surrender of the proper coupon for such interest hereto annexed.

In witness whereof we have hereunto set our hands and seal, at La Fargeville, N. Y., this fifteenth day of February, 1872.

GEORGE H. STROUGH, [L. S.]
SAMUEL W. GATES, [L. S.]
SIMON FOLTS, [L. S.]
Commissioners.

Registered in Jefferson County clerk's office, April 3d, 1872.
(Signed) J. STEAR, *Clerk.*

That afterwards and before the first day of January, 1873, the said commissioners did deliver the said 140 bonds above mentioned, with the coupons annexed, to the said The Clayton & Theresa Railroad Company, in payment and exchange for an amount of the stock of said railroad company equal at par to the amount of the principal of said bonds, which stock was then and there transferred and issued to and received by the said commissioners for and in behalf of the said defendant by virtue of and pursuant to said acts. That afterwards, and before the first day of February, 1874, the said 140 bonds, with the coupons or interest warrants annexed for the payments of interest falling due on the fifteenth of February, 1874, and subsequently, were duly transferred and delivered to this plaintiff, for a valuable consideration parted with by him therefor, and that this plaintiff was and is a bona-fide holder of each of said bonds and the coupons annexed for a valuable consideration parted with by him therefor.

And this plaintiff alleges that at the time said bond No. 21 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the fifteenth day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 21. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to this plaintiff, on the fifteenth of February, 1874, at the Metropolitan Bank, in the city of New York, the said sum of $17.50, on the presentation and surrender at said bank of the said last-named coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at the said Metropolitan Bank and payment thereof demanded, and the same offered to be surrendered on payment thereof, and the defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the said plaintiff.

3 2D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 22 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 22. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable and promised and agreed to pay to the plaintiff, on the the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

3D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 23 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan, Bank, in the city of New York.

No. 23. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

4TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 24 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 24. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of February, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

5TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 25 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 25. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

6TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 26 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 26. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

7TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 27 was transferred to him as aforesaid there was annexed thereto and transfered to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 27. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

5 8TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 28 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 28. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

9TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 29 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 29. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

10TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegation and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 30 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 30. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

6 11TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 31 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 31. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

12TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 32 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 32. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

13TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 15, and further alleges that at the time said bond No. 33 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 33. GEORGE H. STROUGH, *Commissioner.*
$17.50.

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

7 14TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 34 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest-warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 34. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

15TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 35 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon,

duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 35. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

16TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 36 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 36. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

8 17TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges

that at the time said bond No. 37 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 37. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

18TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 38 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. . GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

19TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the

end of the paragraph in folio 14, and further alleges that at the time said bond No. 39 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 39. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

9 20TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 40 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 40. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

21ST COUNT.—And this plaintiff states and repeats as a part of this

that at the time said bond No. 37 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 37. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

18TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 38 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. . GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

19TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the

end of the paragraph in folio 14, and further alleges that at the time said bond No. 39 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 39. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

9 20TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 40 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 40. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

21ST COUNT.—And this plaintiff states and repeats as a part of this

count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 41 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest war rant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 41. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

22D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 42 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 42. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

10 23D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 43 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 43. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

24TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 44 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 44. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

25TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 45 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 45. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

11 26TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 46 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 46. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant

still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

27TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 47 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1875, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 47. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

28TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 48 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 48. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said

bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

12 29TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 49 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 49. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

30TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 50 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 50. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said

last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

31ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 51 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 51. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

13 32D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 52 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 52. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

debted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

37TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 57 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 57. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

15 38TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 58 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 58. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

39TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 59 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest-warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 59. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

40TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 60 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest-warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 60. GEORGE H. STROUGH,
$17.50. *Commissioner.*

debted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

37TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 57 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 57. GEORGE H. STROUGH.
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

15 38TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 58 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 58. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

39TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 59 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest-warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 59. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

40TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 60 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest-warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 60. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

16 41ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 61 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 61. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

42D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 62 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 62. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

43D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 63 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 63. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

17 44TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 64 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 64. GEORGE H. STROUGH,
$17 50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

45TH COUNT.—And this plaintiff states aad repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 65 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 65. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

46TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 66 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 66. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'ry, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

18 47TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 67 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 67. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

48TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 68 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 68. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of February, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

49TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 69 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 69. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

19 50TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 70 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 70. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

51ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 71 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 71. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

52D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 72 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 72. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

53D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 73 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 73. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

54TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 74 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 74. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

55TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 75 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 75. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

21 56TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 76 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 76 . GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

57TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 77 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 77. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

58TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 78 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 78. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

22 59TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 79 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 79. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15' day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

60TH COUNT. And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 80 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 80. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15' day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

61ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 81 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 81. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15' day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for the payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

23 62D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words " parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 82 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 82. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

63D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 83 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 83. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

64TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 84 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 84. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15' day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

61ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 81 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 81. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15' day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last mentioned coupon was, at maturity, duly presented for the payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

23 62D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words " parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 82 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 82. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

63D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 83 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 83. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

64TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 84 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 84. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

24 65TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 85 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 85. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same, on its being surrendered, to the damage of the plaintiff.

66TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 86 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 86. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of February, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same, on its being surrendered, to the damage of the plaintiff.

67TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 87 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 87. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been, and still are, owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same, on its being surrendered, to the damage of the plaintiff.

25 68TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 88 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 88. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

69TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 89 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 89. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

70TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 90 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 90. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

26 71ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 91 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 91. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

72D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 92 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 92. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

73D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 93 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 93. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

27 74TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 94 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 94. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank, and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

75TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 95 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 95. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

76TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 96 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 96. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

28 77TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 97 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 97. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, du'y presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

78TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 98 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 98. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

79TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 99 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 99. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

29 80TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 100 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon duly made and certified by said commissioners, for and in behalf of the said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 100. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

81ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 101 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of Febru'ry, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 101. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50 on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

82D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 102 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 102. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

30 83D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 103 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of the said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 103. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer by the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

84TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph on folio 14, and further alleges that at the time said bond No. 104 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 104. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

85TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 105 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 105. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

31 86TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 106 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 106. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

87TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 107 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 107. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

88TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 108 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at tee Metropolitan Bank, in the city of New York.

No. 108. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

85TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 105 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 105. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay, to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

31 86TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 106 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 106. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

87TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 107 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 107. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

88TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 108 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at tee Metropolitan Bank, in the city of New York.

No. 108. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

32 89TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 109 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 109. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

90TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 110 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 110. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on the payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

91ST COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 111 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 111. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff, the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

33 92D COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 112 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 112. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

93D COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 113 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 113. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of plaintiff.

94TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 114 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 114. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

34 95TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 115 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 115. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of defendant.

96TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 116 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

97TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 117 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 117. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment atsaid bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

35 98TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 118 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 118. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

99TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 119 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 119. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

100TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond, No. 120, was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 120. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

36 101ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond, No. 121, was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 121. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

102D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond, No. 122, was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 122. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

103D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond, No. 123, was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant, or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 123. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

37 104TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 124 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 124. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

105TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 125 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 125. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

106TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 126 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 126. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

38 107TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 127 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 127. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

108TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor" at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 128 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 128. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

109TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 129 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of Febrnary, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 129. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

39 110TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor" at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 130 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 130. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and are still owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

111TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor" at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 131 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the fifteenth day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 131. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

112TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor" at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 132 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

$17.50. GEORGE H. STROUGH,
No. 132. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

40 113TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor" at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 133 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 133. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

114TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 134 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 134. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

115TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 135 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 135. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

41 116TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 136 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 136. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

117TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 137 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 137. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

118TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 138 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 138. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

42 119TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 139 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz :

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 139. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

120TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the t said bond No. 140 was transferred to him as aforesaid, there was nexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz :

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 140. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

121ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 141 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said combissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 141. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

43 122D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 142 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 142. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

123D COUNT.—And this plaintiff states and repeats as a part of this this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 143 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 143. GEORGE H. STROUGH.
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

124TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 144 was transferred to him as aforesaid, there were annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 144. GEORGE A. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

44 125TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 145 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 145. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

126TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 146 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 146. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

127TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 147 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 147. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon, was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

45 128TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 148 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 148 GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

129TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 149 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 149. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

130TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 150 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 150. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and are still owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

46 131ST COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 151 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 151. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

132D COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 152 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 152. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feby, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

133D COUNT. And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 153 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 153. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

47 134TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 154 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 154. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

135TH COUNT.—And this plaintiff states and repeats, as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 155 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 155. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

136TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 156 was transferred to him as aforesaid there was annexed to and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 156. GEORGE H. STROUGH,
$57.01. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

48 137TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 157 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 187. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender, at said bank, of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refuses to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank, and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof; and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

138TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 158 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon, at the Metropolitan Bank, in the city of New York.

No. 158. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof; and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

139TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action the allegations and statements contained in the above first count to the words "parted with by him therefor," at the end of the paragraph in folio 14; and further alleges that at the time said bond No. 159 was transferred to him as aforesaid, there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The Town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 159. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender, at said bank, of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum, or any part thereof, although the said last-mentioned coupon was, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof; and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

49 140TH COUNT.—And this plaintiff states and repeats as a part of this count or cause of action, the allegations and statements contained in the above first count to the words "parted with him therefor," at the end of the paragraph in folio 14, and further alleges that at the time said bond No. 160 was transferred to him as aforesaid there was annexed thereto and transferred to him therewith an interest warrant or coupon, duly made and certified by said commissioners, for and in behalf of said defendant, in the words and figures following, viz:

The town of Orleans, on the 15th day of February, 1874, will pay seventeen dollars and fifty cents on this coupon at the Metropolitan Bank, in the city of New York.

No. 165. GEORGE H. STROUGH,
$17.50. *Commissioner.*

That from the time of said transfer to the plaintiff the said last-mentioned bond and coupon have been and still are owned and held by this plaintiff; and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15 day of Feb'y, 1874, at the Metropolitan Bank, in the city of New York, the said last-mentioned sum of $17.50, on the presentation and surrender at said bank of the said last-mentioned coupon.

Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned coupon was at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment thereof, and the said defendant still neglects and refuses to pay the same on its being surrendered, to the damage of the plaintiff.

50 And it is suggested and made to appear that at the June term, 1875, of said court, held at Canandaigua, on motion of the plaintiff's counsel, and with the assent of the counsel for the defendant, and by order of said court, the declaration or complaint herein may amended by striking out all after the conclusion of the 140 count thereof and inserting as follows:

141 COUNT.—And the plaintiff avers, and repeats as a part of this count or cause of action, the statements and allegations contained in the above first count, to and including the words "parted with by him therefor," at the end of the paragraph in the above 14 folio; and the plaintiff further alleges that at the time said 140 bonds hereinbefore mentioned were transferred to the plaintiff as aforesaid, there was annexed thereto and transferred to him therewith 140 coupons or interest-warrants, numbered from 21 to 160, and each in the form and for the amount of the coupons hereinabove set out, except that each was payable on the 15th day of August, 1874; that from the time of said
51 transfer hitherto and now the plaintiff has been and is the owner and holder of said bonds and said last-mentioned 140 coupons, and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of August, 1874, at the Metropolitan Bank, in the city of New York, the amount of said last-mentioned 140 coupons, being the sum of two thousand four hundred and fifty dollars, on the presentation and surrender at said bank of the said last-mentioned 140 coupons. Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, although the said last-mentioned 140 coupons were at maturity duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment of the same, and the defendant still neglects and refuses to pay the same or any part thereof, to the damage of the plaintiff.

52 142 COUNT.—And the plaintiff avers and repeats, as a part of this count or cause of action, the statements and allegations contained in the above first count, to and including the words "parted with by him therefor," at the end of the paragraph in the above 14th folio; and the plaintiff further alleges that at the time said 140 bonds hereinbefore mentioned were transferred to the plaintiff as aforesaid there was annexed thereto and transferred to him therewith 140 coupons or interest warrants, numbered from 21 to 160, and *and* each in the form and for the amount of the coupons herein above set out, except that each was payable on the 15th day of February, 1875. That from the time of

said transfer hitherto and now the plaintiff has been and is the owner and holder of said bonds and said last-mentioned 140 coupons, and that by means of the premises the defendant became indebted and liable, and promised and agreed to pay to the plaintiff, on the 15th day of February, 1875, at the Metropolitan Bank, in the city of New York,
53 the amount of said last-mentioned 140 coupons, being the sum of two thousand four hundred and fifty dollars, on the presentation and surrender at said bank of the said last-mentioned 140 coupons. Nevertheless, the defendant has neglected and refused to pay the said last-mentioned sum or any part thereof, though the said last-mentioned 140 coupons were, at maturity, duly presented for payment at said bank and payment thereof demanded, and the same then and there offered to be surrendered on payment of the same, and the defendant still neglects and refuses to pay the same or any part thereof, to the damage of the plaintiff.

By reason of which said several premises the plaintiff has sustained damages in the aggregate to the sum of seven thousand three hundred and fifty dollars, with interest on two thousand four hundred and fifty dollars thereof from the 15th day of February, 1874, and upon two thousand four hundred and fifty dollars thereof from the 15th day of August, 1874, and upon two thousand four hundred and fifty dollars thereof from the 15th day of February, 1875.

54 Wherefore the said plaintiff demands judgment against the defendant for the sum of seven thousand three hundred and fifty dollars, with interest on $2,450 thereof from February 15th, 1874, on $2,450 thereof from August 15th, 1874, and on $2,450 thereof from February 15th, 1875, and for the costs of this action.

W. & J. D. KERNAN,
Attorneys & Solicitors for the Plaintiff, Utica, N. Y.

55 (Indorsed:) U. S. circuit court, northern district N. Y. Nathan E. Platt vs. The Town of Orleans. (Copy) Narr. as amended. W. & J. D. Kernan, att'ys for pl'ff, Utica, N. Y.

56, 57 *Notice of retainer.*

U. S. circuit court, northern district of New York.

NEHEMIAH E. PLATT
against
THE TOWN OF ORLEANS.

SIR: I have been retained by and appear for the defendant, The Town of Orleans, in this action, and all papers may be served on me at my office in city of Watertown, Jeff. Co., N. Y.

Dated August 6, 1874.

LEVI H. BROWN,
Attorney for Defendant.

To W. & J. D. KERNAN, Esq's,
Plaintiff Attorneys.

Rec'd by mail Aug. 16, '74.

58 Circuit court of the United States in and for the second circuit and the northern district of New York.

NEHEMIAH E. PLATT
ag'st
THE TOWN OF ORLEANS.

And the said defendant, The Town of Orleans, by Levi H. Brown, its attorney, comes and defends, and for plea and answer to the plaintiff's bill of complaint herein denies the same, & each and every allegation therein contained.

Second defence.

And for further answer and second defence, said defendant denies that the plaintiff is resident of the city of Chicago & State of Illinois, or non-resident of the State of New York, and on information & belief alleges that at commencement of this action said plaintiff was & now is resident, inhabitant, and a citizen of the State of New York, and within the second circuit & northern district thereof, and this court therefore has no jurisdiction of this action.

Third defence.

For a further answer and third defence, said defendant alleges
59 that under and pursuant to the provisions of the acts of the legislature of the State of New York in said plaintiff's complaint referred to, and the statutes of said State, and by virtue of the power vested in the supreme court of said State, at special term of said court duly held in and for the county of Oneida, at court-house in the city of Utica, on 12th day of September, 1871, on application of tax-payers of said town of Orleans, an order was duly granted, after due notice of such application given and hearing had by the petitioner in said proceedings before the county judge in said complaint referred to, directing that a certiorari issue out of said court and be allowed, directed to Azariah H. Sawyer, county judge of said county of Jefferson, and to the clerk of said county, commanding them, respectively, under their hands and seals, to certify & return to said supreme court, at the next general term thereof, in the 4 judicial department, all the proceedings had before said county judge, and all record thereof remaining of record in the clerk's office of said county, in the matter of said
60 petition and appointment of said commissioners in the plaintiff's complaint referred to, and all matter pertaining thereto, which order was duly entered in the clerk's office of said Jefferson County, and thereof the said Strough, Gates, and Folts, the said commissioners, had due notice, and such writ of certiorari was duly issued and filed in said clerk's office in October, 1871, and said county judge and county clerk did, as therein required and commanded, certify to said general term of said court all said proceedings, records, & matters relating to the appointment of said commissioners, and of all thereof said commissioners had due notice, and all power and authority vested in and conferred upon said commissioners under and by virtue of said acts of the legislature and the proceedings and appointment in said complaint mentioned was thereupon suspended & superseded, and all proceedings by said commissioner' were thereby & by virtue of the law in such case pro-

61 vided stayed pending such certiorari, and until final hearing & decision thereon in said court.

That such certiorari remained pending in said court, so staying their proceedings & suspending their power to act, until the 20th day of June, 1872, when a decision of said court thereon, at term then held, was made and rendered, the same having been argued in May, 1872, at a term of said court then held. That from the decision and order of said supreme court there made, at a general term, an appeal was duly taken and had to the court of appeals, the highest court of said State, on the 10th das of July, 1872, and such proceedings were had in such appeal in said last-named court that after full argument and hearing of all the parties concerned or interested, and due consideration had in and by said court of appeals, a decision & order was duly made by such court in February, 1873, reversing and setting aside all and every the proceedings, adjudication, and appointment of said commissioners in complaint

62 stated, by said county judge, and directing the record of such decision remitted to said inferior court, and such remittitor in accordance with the rule and practice of said courts and the law in such case made, was duly filed in the clerk's office aforesaid, and the judgment of said court of appeals was, by order of said supreme court dated March 19, 1873, duly made the judgment of said last-named court, and thereby all power conferred or attempted to be conferred by said appointment named in said complaint, or thereby attempted to be conferred thereby, was divested and taken away. That the Clayton & Theresa Railroad Company, its officers and agents, the said Strough, Folts, & Gates, the alleged commissioners, & all persons and parties through whose hands or custody the alleged bonds in complaint referred to have passed, had notice of all the proceedings aforesaid, and aided and assisted by their counsel, attorneys, and otherwise in the defence of said certiorari

63 and appeal, and in the efforts to sustain such appointment of commissioner.

The defendant further alleges that pending said certiorari in the supreme court, and in the month of April, 1872, the said Clayton and Theresa Railroad Company, its officers and agents, and the said Strough, Gates, & Folts, well knowing the pendency of said writ & proceedings thereon, and with intent to cheat and defraud the defendant, its inhabitants, and the property owners and tax-payers therein, and to attempt to evade a decision of said court, conspired, confederate, and colluded together to issue said bonds, and in execution of such conspiracy and fraudulent intent met at Watertown, several miles distant from the town of Orleans, and in the night, time in a secret manner, made, and said commissioners signed said bonds in complaint mentioned, and thereafter, in said April, 1872, the same were put into the hands of one Biddlecom, the treasurer of said railroad company, but there was not any valid subscription for stock made & no good-faith delivery of

64 said bonds therefor, and only a pretended and colorable one, to be made available or not as the said conspirators and their confederates should thereafter determine. Said bonds or any thereof were never passed, assigned, or transferred to any bona fide holder or innocent purchaser for value, but the same held and continued in the possession, custody, and control of said Clayton & Theresa Railroad Company, its agents and officers, and other parties, who, having notice and being cognizant of all the facts, acts, doings, & fraudulent intent, conspiracy above stated, subsequently confederated, conspired, and colluded with them to attempt to carry such aforesaid fraudulent intent into further execution, until after the aforesaid decision of said court of

appeals, and after they were fully appraised thereof, and all the said parties who held & into or through whose hands said bonds passed before the same came or are alleged to have come to the hands of the plaintiff,
were, during all the time aforesaid, residents, inhabitants, and
65 citizen' of the State of New York, and within the territory of the
second circuit & northern district thereof, and under and by virtue of the laws of the said State and the United States and the rules and practice of this court, the parties by whom said bonds were transferred to the plaintiff and who held the same before they were assigned to him, and who transferred the same to him, could not maintain this action in this court, and of each, every, and all the matters & things above alleged the plaintiff had notice when he received said bonds, and he did not receive the same in good faith or for value parted with at the time or in the regular course of business, but he pretended to purchase and receive the same for the sole purpose of holding out that he was a non-resident of the said State of New York and a purchaser of said bonds as a means of endeavoring to maintain this action in this
court as a further means of more effectually furthering and carry-
66 ing out the fraudulent intent and scheme herein-above alleged,
to defraud the defendant tax-payers & owners of property within its territorial limits.

And defendant further alleges that the plaintiff when he received said bonds knew that the person or party from whom he received the same could not maintain an action thereon, or for the recovery of the interest thereon, for the reason that the same were by the laws of the State of New York utterly void, and had been fraudulently and without authority issued, as hereinabove stated, and such prior holders thereof were residents of the State of New York; and all the proceedings aforesaid upon certiorari and appeal, and the decision thereon, were of record in aforesaid county clerk's office.

Wherefore the defendant prays judgment, that the complaint be dismissed, and said bonds and coupons be adjudged void, & that plaintiff pay costs of defence of this action.

LEVI H. BROWN,
Def't's Attorney.

67 (Indorsed:) United States circuit court in & for the second circuit and northern district of New York. Nehemiah E. Platt ag'st the Town of Orleans. Copy answer. Levi H. Brown, def't's attorney.

WATERTOWN, N. Y.

GENT.: Take notice that the within is a copy of the answer of the def't in the within entitled action, which answer has been filed with the clerk of the U. S. circuit court at Utica, N. Y., Sept. 9, '74.

Yours, &c.,

LEVI H. BROWN,
Def't's Att'y.

To W. & J. D. KERNAN, Esq's,
Pff's Att'ys.

68 U. S. circuit court, northern dist. of New York.

NATHAN E. PLATT
ag'st
THE TOWN OF ORLEANS.

It is stipulated and agreed that on the trial hereof the plaintiff may

produce and give in evidence the coupons for interest on the bonds in the declaration or complaint mentioned which became due and payable on the 15 of August, 1874, and also the coupons for interest on said bonds which became due and payable on the 15 of February, 1875, with the same force and effect as though this action had been commenced after said coupons became due and payable, and said complaint had been amended to cover and claim judgment for the amount of the same, in addition to the amount of the c'upons specially mentioned in said complaint; and the answer herein shall be deemed applicable to said c'upons so to be given in evidence by virtue of this stipulation.

JUNE 5, 1875.—And for purpose of the action & trial the declaration or complaint is deemed & shall be treated as amended by addi-
69 tion of & containing allegations covering the above mentioned coupons, and the answer is deamed amended so as properly to answer those allegations.

LEVI H. BROWN,
Def't's Att'y.
W. & J. D. KERNAN,
Pl'ff's Att'ys.

(Indorsed:) U. S. circuit court. Nathan E. Platt ag'st the Town of Orleans. Stip. as to coupons of Aug., 1874, & Feb., 1875.

70, 71 *Notice of trial for plaintiff.*

United States circuit court, northern district of New York.

NATHAN E. PLATT
ag'st
THE TOWN OF ORLEANS.

To Levi H. Brown, esq., solicitor for defendant:

SIR: The above cause will be brought to trial, and an inquest taken therein, at the next circuit court appointed to be held in and for the northern district of New York, at the court-house in the village of Canandaigua on the 15 day of June, 1875.

Dated the 25th day of May, 1875.

Yours, &c.,

W. & J. D. KERNAN,
Solicitors for Plaintiff.

Due & personal service of above notice of trial is admitted this 25th day of May, 1875.

LEVI H. BROWN,
Solicitor for Defendant.

Filed duplicate & note of issue with U. S. circuit clerk this 2nd day of June, 1875.

W. P. Q.

72,73 *Notice of trial for defendant.*

United States circuit court, northern district of New York.

NATHAN E. PLATT
ag'st
THE TOWN OF ORLEANS.

Please take notice that I intend to bring on the trial of the above en-

titled action at the next circuit court to be held at the court-house in village of Canandaigua in and for the northern district of New York on the 15th day of June, 1875, at ten o'clock in the forenoon of that day, and shall then and there move the court for a dismissal of the complaint with costs.

Dated the 31 day of May, 1875.

Yours, &c.,

LEVI H. BROWN,
Defendant's Attorney & Solicitor.

To W. & J. D. KERNAN, Esq's,
Plaintiff's Attorneys & Solicitors.

Due and personal service of a notice of trial, of which the above is a copy, is hereby admitted this day of 18 .

Rec'd by mail June 1, '75.

N. E. K.,
Att'y for Plaintiff.

74 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the village of Canandaigua on Tuesday, the 15th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

2½ o'clock p. m. Court met.

Present, the honorable William J. Wallace, judge.

Francis Kernan.

NATHAN E. PLATT
vs.
THE TOWN OF ORLEANS.

Levi H. Brown.

On motion of Francis Kernan, plaintiff's attorney, ordered that a jury be empannelled and that the trial of this cause do now proceed.

Whereupon the following named jurors were called and sworn, viz: Simon Struble, Josiah Pierce, George S. Redfield, Marcus Ansley, David Briggs, John W. Trafton, Luther Balis, Cornelius Vanderburgh, B. Franklin Knapp, Joseph Kingsley, William G. Miller, Floyd Hutchins.

M'r Kernan opens case for plaintiff.

Plaintiff's witness sworn, Russell B. Biddleton.

Plaintiff rests.

75 M'r Brown opens case for defendant.

Defendant's witnesses sworn: Simon Folts, Russell B. Biddleton.

Trial to be continued to-morrow morning.

76 WEDNESDAY, *June* 16, 1875—10 o'clock a. m.

Court met.

Present, Hon. William J. Wallace, judge.

NATHAN E. PLATT
vs.
THE TOWN OF ORLEANS.

Jury called. 12 answer.

Trial continued.

Defendant's witness sworn, Isaac Maynard.

Plaintiff's witness sworn, Nathan E. Platt.
Evidence closed.
M'r Brown makes argument for defendant.
M'r Kernan makes argument for plaintiff.
Court directs a verdict for plaintiff.
The jury here, under direction of the court, answer and say they find a verdict for the plaintiff for $7,776.43.

77 The jury having found a verdict for the plaintiff for $7,776.43, it is ordered, on motion of defendant's attorney, that defendant have sixty days in which to make and serve a bill of exceptions, and plaintiff have sixty days to serve amendments thereto, and that entry of judgment be stayed until said bill of exceptions is settled.

78 At a stated term of the circuit court United States of America for the northern district of New York, in the second circuit, held at the village Canandaigua on Wednesday, the 16th day of June, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable William J. Wallace, judge.

NATHAN E. PLATT
vs.
THE TOWN OF ORLEANS.

The jury having found a verdict for the plaintiff for $7,776.43, it is ordered, on motion of defendant's attorney, that defendant have sixty days in which to make and serve a bill of exceptions, & plaintiff have sixty days to serve amendments thereto, and that entry of judgment be stayed until said bill of exceptions is settled.

A true copy.

Witness my hand and official seal at Canandaigua this 16th day of June, 1875.

[L. S.] CHARLES MASON, *Clerk.*

79 (Indorsed:) U. S. circuit court, N. district of N. Y. Nathan E. Platt vs. The Town of Orleans. Copy order.

80 United States circuit court, northern district of New York.

Pleas before the judge of the circuit court of the United States of America for the northern district of New York, in the second circuit, at the U. S. court-room in the city of Utica at an adjourned term of said court held March 21st, 1876.

Present, Hon. Alex. S. Johnson, judge of said court; Charles Mason, clerk.

NATHAN E. PLATT
against
THE TOWN OF ORLEANS.

Be it remembered that heretofor', to wit, on the 28th day of July, 1874, of the June term, 1874, Nathan E. Platt, the said plaintiff, by W. & J. D. Kernan, his attorneys, duly filed and entered with the clerk of the said court, at the city of Utica aforesaid, his certain declaration herein against the Town of Orleans, the said defendant, which said declaration is hereto annexed, which said declaration has been amended by stipulation hereto annexed, and that on the 9th day of September,

81 1874, the Town of Orleans, the said defendant, duly filed with the said clerk its answer thereto, which said answer is hereto annexed; that the issues so joined were ordered by the said court to be tried at the term of said court appointed to be held at Canandaigua on the 16th day of June, 1875, at which day and place last aforesaid, before

the judge of said court, came the above-named plaintiff and the above-named defendant, by their respective attorneys aforesaid, and the jurors of the jury summoned to try said issues being called, chosen, and sworn, the said cause was tried, and the jury found and rendered a verdict in favor of the said plaintiff and against the said defendant, and assessed the damages of the plaintiff, by reason of the premises, over and above his costs and charges in this suit in his behalf expended and incurred, at the sum of seven thousand seven hundred and seventy-six dollars and forty-three cents, as appears from a certified copy of the minutes of the said court hereto annexed, with the costs and charges of
82 the said plaintiff, to be adjusted, and the said costs and charges having been adjusted and adjudged at five hundred and seventy-three dollars and seventy-nine cents:

Now, therefore, it is considered, ordered, adjudged, and decreed that Nathan E. Platt, the said plaintiff, recover of & against the Town of Orleans, the said defendant, the sum of seven thousand seven hundred and seventy-six dollars and forty-three cents damages, and five hundred and seventy-three dollars & seventy-nine cents costs and charges, as by the jurors aforesaid, in form aforesaid, found and assessed, which said damages, costs, and charges in the whole amount to eight thousand three hundred and fifty dollars and twenty-two cents.

Judgment signed this 22d day of March, 1876.

CHARLES MASON, *Clerk.*

83 (Indorsed:) U. S. circuit court, northern district N. Y. Nathan E. Platt vs. The Town of Orleans. Judgment & roll. W. & J. D. Kernan, att'ys for pl'ff. Utica, N. Y. Damages, $7,776.43; costs, 573.79—$8,350.22. Filed M'ch 22, 1876, 4 h. 30 m. p. m.

84 United States circuit court, northern district of New York.

NATHAN E. PLATT
vs.
THE TOWN OF ORLEANS.

This cause was duly continued to the term of this court appointed to be held at the court-house at Canandaigua, in and for said district, on the third Tuesday of June, 1875, at which term, time, and place came the parties, by their respective counsel; and on motion of the plaintiff's counsel an order was duly granted by the said court giving leave to the plaintiff to amend and add to his bill of complaint in this action by adding thereto a count upon and for, and claiming to recover, each and all the coupons maturing upon the said bonds mentioned in the complaint, and each thereof, on the 13th day of August, 1874, and on the 13th day of January, 1875, and that the defendant's answer served to original complaint herein extend and apply to such answer as amended, and pursuant to such leave granted plaintiff annexed and added to his complaint.

And afterwards, at the time and place last mentioned, to wit, on the 10th day of June, 1875, came the parties aforesaid, by their re-
85 spective counsel, and the said cause came on to be tried before the Hon. William J. Wallace, judge of said court, and a jury duly empannelled.

And thereupon the plaintiff, to maintain said action, gave the following evidence:

Chapter 907 of the laws of 1859 of the State of New York, chapter 283 of the laws of 1871 of said State, amending said first-mentioned chapter, and chapter 925 of laws of 1871 of said State, passed May 12,

1871, were read by the plaintiff in evidence from the printed laws of New York, and the same shall be deemed a part hereof.

The plaintiff's counsel offered and read in evidence a duly-authenticated copy of the articles of association of the Clayton and Theresa Railroad Company, filed in the office of the secretary of state of the State of New York, Feb'y 7, 1871, which articles were in the words and figures following, viz:

Articles of association of the Clayton and Theresa Railroad Company.

Know all men by these presents that we whose names are hereto subscribed, pursuant to the provisions of the act of the legislature of the State of New York, chapter 140, laws of 1850, entitled "An act to authorize the formation of railroad corporations, and to regulate the
86 same," passed April second, 1850, and the amendments thereto, do hereby associate together under the name of "The Clayton and Theresa Railroad Company," for the purpose of constructing and maintaining and operating a railroad for public use, in the conveyance of persons and property to and from the vicinity of Clayton, in the county of Jefferson, and running through the towns of Clayton, Orleans, and Theresa, and Philadelphia, to a point on the Black River and Morristown Railroad, in the said county of Jefferson, at or near the village of Philadelphia.

The provisions of the association are as follows:

The said company to continue in existence for the term of one hundred years from the date of its organization; the line of road contemplated and herein provided for shall be constructed with all proper turnouts, sidings, and branches, from Clayton village, in the county of Jefferson, and along the line through the towns of Clayton, Orleans, Theresa, and Philadelphia, in the said county of Jefferson, to a point in the Black River and Morristown Railroad, at or near the village of Philadelphia, in the said county of Jefferson. The length of the said road shall be about twenty miles. The amount of the capital stock of the said company is hereby fixed at the sum of two hundred and fifty thousand dollars, divided into two thousand five hundred shares of one hundred dollars each, and the name of such company shall be "The Clayton and Theresa Railroad Company."

The following-named thirteen persons are hereby named and appointed as directors of the said company under the provisions of the
87 said act, and shall manage its affairs for the first year, and until others shall be chosen in their places, viz:

Alden T. Barker, Clayton, Jefferson Co., N. Y.
Thomas Rees, Clayton, Jefferson Co., N. Y.
John Johnston, Clayton, Jefferson Co., N. Y.
Richard M. Estelyn, Clayton, Jefferson Co., N. Y.
James Johnson, Clayton, Jefferson Co., N. Y.
John Doer, Clayton, Jefferson Co., N. Y.,
Horatio Still, Theresa, Jefferson Co., N. Y.
Russel B. Biddlecun, Orleans, Jefferson Co., N. Y.
Cornelius Bart, Orleans, Jefferson Co., N. Y.
William Whaley, Orleans, Jefferson Co., N. Y.
John S. Luell, Orleans, Jefferson Co., N. Y.
William Rogers, Orleans, Jefferson Co., N. Y.
Nathan Halloway, Orleans, Jefferson Co., N. Y.

[Six 5 c. in. rev stamp cancelled.]

We, the subscribers, have hereunto affixed our hand with our respective places of residence and the number of shares of capital stock, respectively subscribed by us this 24th day of January, 1871.

	Name of subscribers.	Residence.	No. of shares.	Am't of stock.
	S. T. Barker	Clayton, N. Y	Ten	$1,000
	Thos. Rees	Clayton, N. Y	Ten	1,000
	C. C. Calvin (by T. Rees)	Garden Island, Ont	Five	500
	Augustus Potter	Clayton, N. Y	Five	500
	S. G. Johnston	Clayton, N. Y	Five	500
	James Johnston	Clayton, N. Y	Five	500
88	R. M. Esselstyn	Clayton, N. Y	Five	500
	J. B. & J. S. Hubbard	Clayton, N. Y	Five	500
	John Johnston	Clayton, N. Y	Five	500
	E. McCarn	Clayton, N. Y	Five	500
	F. Barrett	Clayton, N. Y	Five	500
	S. D. Johnston	Clayton, N. Y	Five	500
	John H. Graves	Clayton, N. Y	Two	200
	Amos Ellis	Clayton, N. Y	Three	300
	S. Hale	Clayton, N. Y	Five	500
	David S. Rees	Clayton, N. Y	Two	200
	Luther Eddy	Clayton, N. Y	Two	200
	Seeba McCane	Clayton, N. Y	One	100
	Joseph Thibault	Clayton, N. Y	Two	200
	John J. Delany	Clayton, N. Y	Two	200
	H. G. Barker	Clayton, N. Y	One	100
	Charles M. Marshall	Clayton, N. Y	One	100
	Swart & Dunton	Clayton, N. Y	Two	200
	Andrew Peters	Clayton, N. Y	One	100
	Richard Halpin	Clayton, N. Y	Two	200
	Daniel A. Garlock	Clayton, N. Y	One	100
	Simon Breslau	Clayton, N. Y	One	100
	David Beamp	Theresa, N. Y	Two	200
	Bain Bro's	Clayton, N. Y	One	100
	L. E. Frame	Depauville	Two	200
	Phillips & Buckley	Clayton, N. Y	One	100
	William Hawes	Clayton, N. Y	One	100
	M. Cantwell	Clayton, N. Y	One	100
	Russel B. Biddlecun	Orleans, N. Y	Five	500
89	Nathan Holloway	Orleans, N. Y	Five	500
	W'm Whaley	Orleans, N. Y	Five	500
	W'm Rogers	Orleans, N. Y	Five	500
	David Page	Clayton, N. Y	One	100
	D. J. Deway	Orleans, N. Y	Three	300
	John A. Suell	Orleans, N. Y	Five	500
	Robert F. Jerome	Orleans, N. Y	Five	500
	G. F. Baltz	Orleans, N. Y	Two	200
	C. Bort	Orleans, N. Y	Five	500
	Wayland F. Ford	Orleans, N. Y	Five	500
	Adam Fort	Orleans, N. Y	One	100
	Michael J. Hughes	Orleans, N. Y	One	100
	Luther Lamson	Orleans, N. Y	Two	200
	Antrouse Charletois	Clayton, N. Y	One	100
	L. C. Harn	Clayton. N, Y	One	100
	Henry Walt	Clayton, N. Y	Two	200
	Silas H. Linnell	Clayton, N. Y	One	100
	A. M. Barney	Clayton Centre	One	100
	C. R. Linnell	Clayton, N. Y	One	100
	Geo. D. Linnell	Clayton, N. Y	One	100

Names of subscribers.	Residence.	No. of shares.	Am't of stock.
Ambrose Littlefield	Clayton, N. Y	One	100
Patrick McRuby	Clayton, N. Y	One	100
Fred. Dufor d	Clayton, N. Y	One	100
James Loughlin	Clayton, N. Y	One	100
Lawrence Felterly	Clayton, N. Y	Two	200
Benj. Kent	Clayton, N. Y	One	100
C. C. Chadwick	Theresa, N. Y	One share	100
V. &. J. Cooper	Theresa, N. Y	One	100
Joseph Fayal	Theresa, N. Y	One	100
90 Geo. E. Yost	Theresa, N. Y	One	100
L. Hannahs	Theresa, N. Y	One	100
Horatio Still	Theresa, N. Y	One	100
Martin Barney	Clayton, N. Y	Three	300
John H. Graves	Clayton, N. Y	Four	400
S. G. Johnston	Clayton, N. Y	One	100
G. M. Hale	Clayton, N. Y	One	100
Thomas Dowdall	Clayton, N. Y	One	100
Barnard Heldt	Clayton, N. Y	One	100
W'm H. Rees	Clayton, N. Y	One	100
S. S. Looper (p'r B)	Clayton, N. Y	Two	200
J. W. Thompson	Clayton, N. Y	One	100
D. C. Porter	Clayton, N. Y	One	100
David Boyd	Clayton, N. Y	One	100
Albert Brooker	Clayton, N. Y	One	100
H. E. Morse	Clayton, N. Y	One	100
P. A. de Lannboe	Clayton, N. Y	One	100
Hial Cook	Clayton, N. Y	One	100
L. E. Phillips	Clayton, N. Y	One	100
J. B. Sherman	Clayton, N. Y	One	100
Daniel Garlock	Clayton, N. Y	Two	200
W'm H. Consaul	Clayton, N. Y	One	100
John W. Hayes	Clayton, N. Y	One	100
A. Buskirk	Clayton, N. Y	One	100
W'm Hutchenson	Clayton, N. Y	One	100
John Dove	Clayton, N. Y	Five	500
G. H. Dove	Clayton, N. Y	Two	200
Nelson Defore	Clayton, N. Y	One	100
A. P. Rogers	Clayton, N. Y	One	100
G. W. Hilt	Clayton, N. Y	One	100
D. G. Coop	Clayton, N. Y	Two	200
C. E. Share	Clayton, N. Y	One	100

91

92 STATE OF NEW YORK,
County of Jefferson, ss:

Russell B. Biddlecun, Alden S. Barker, and Richard M. Esselstyn, being each duly sworn, deposes and says—each for himself deposes and says, that they are directors of the Clayton and Theresa Railroad Company, named in the annexed articles of association, and they depose and say that at least one thousand dollars of stock for every mile of railroad proposed to be made has been in good faith subscribed thereto, and ten per cent. paid thereon in good faith and in cash to the directors named in said articles of association, and that it is intended in good faith to

construct or to maintain and operate the road mentioned in such articles of association.

ALDEN F. BARKER.
R. M. ESSELSTYN.
RUSSELL B. BIDDLECUN.

Sworn to before me this 4th day of February, 1871.
WAYLAND F. FORD,
Notary Public.

STATE OF NEW YORK,
OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding with the original articles of association of the "Clayton and Theresa Railroad Company," with affidavit of three directors thereto annexed, filed and recorded in this office on the seventh day of February, 1871, and do hereby certify the same to be a correct transcript therefrom, and of the whole of said original.

93 Witness my hand and seal of office of the secretary of state, at the city of Albany, this seventh day of June, one thousand eight hundred and seventy-five.

[L. S.] DIEDRICH WILLERS, JR.,
Secretary of State.

The plaintiff's counsel thereupon offered in evidence a duly authenticated copy, under the seal of the clerk of Jefferson County, of the record of the petition of the tax-payers of said town of Orleans, and the verification thereof, and of the proceedings of the county judge of Jefferson County thereon and in reference thereto, and of the determination and adjudication by and of the said county judge upon said petition and proceedings, and the proof of publication of notice of said determination and adjudication.

The counsel for the defendant objected to the reading of the same in evidence, on the following grounds:

1. That it is void, for the reason that the proceedings were commenced under the provisions of the said chapter 907 of 1869 of the laws of the State of New York, and while the provisions of said chapter were in full force, and before the said chapter 925 of 1871 of said State took effect, and for that reason the petition being drawn under the act

94 of 1869 is not good under the act of 1871. The act of 1871 operated as a repeal of the provisions of the act of 1869, conferring jurisdiction on the county judge; consequently, this proceeding having been commenced under the act of 1869, could not be completed under the act of 1871. The petition is bad under the laws of 1871.

The court overruled this objection, and the counsel for the defendant duly excepted.

2d. That the petition is insufficient, as it contains no allegations that the petitioners are taxed or assessed for, or represent a majority of, the taxable property of the town; also that it don't appear from the petition that the petitioners are a majority of the tax-payers of said town, not including those assessed for dog-tax or highway-tax only.

The court overruled this objection, and the counsel for the defendant duly excepted, and the said papers were read in evidence by said plaintiff's counsel, and were in the words and figures following, viz:

95 To the Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully

show to the honorable county judge of said county, that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; and, as appears by the last preceding tax-list or assessment-roll of the town of Orleans, in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said town, whose names appear upon the last preceding tax-list and assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town, as shown by said tax-list and assessment-roll, and invest the same or the proceeds thereof in stock of the
96 Clayton and Theresa Railroad Company, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18, 1869, and the acts amendatory thereto.

And your petitioners further pray that , who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing, in the name of said town, to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

R. B. Biddlecom.
Robert T. Jerome, or Trumen Jerome, as it appears on assessment-roll.
G. H. Marshall.
George W. Van Coughenet.
J. H. Snyder.
Edgar W. Bedell.
Luther Lamson.
John Delany.
Valda Balter.
D. W. Beardsley. } On assessment-roll, Beardsley Bros.
H. B. Beardsley. }
Wayland F. Ford.
Henry L. Kutz.
Benjamin Wood.
G. W. Hawes.
R. M. Turner.
John M. Walter.
97 Michael Fultz.
E. T. Sargent.
R. C. Smith.
Singer Nast.

Clark B. Bushnell.
Nelson Goodrich.
Thomas Hagan.
James Kilborn.
S. F. Rood.
George Barden.
G. B. Scoville.
R. D. Barden. } Representing Wall & Ellis on ass. roll.
Nicholas Wall. }
Halsy Ellis. }
Peter Gillick.
Peter Gillick.
Lucinda (her X mark) Petrie.
Aaron Samuel.
Joseph Fultz.
Roswell Hildreth.
Abram Tallman.

Lucien Jerome.
Albert Baxter.
John Geissler.
Nicholas Walt.

W'm H. Coffren.
Harvey Petrie.
Adam Gray.
W. W. Van Conghene.
Catharine Booth.
Betsey Turner.
Soloman Kingen.
M'r's Louise (her X mark) Craker.
Melvin S. Tanner.
Andrew Baltz.
W. W. Sheley. } Rep. Sheley & Carter on ass't roll.
Waitstill Carter. }
Laurence Bretsch.
B. B. Marsh.
Alice Waltz.
Sarah A. Richardson.
Edward Barton.
Margaret Cole.
Benjamen Post.
Patrick Gallick.
Nathan Noyes.
Cha's A. Petrie.
Ira Sylvester, j'r. Not on roll.
Jathem Marshall.
D. J. Dewey.
98 Frederick Balts.
George Dorr.
John S. Barrows.
George D. Greenleaf.
Julia A. Barrows, widow.
W. C. Hill.
Isabel S. Cole.
Byron Carter.
Elizabeth Balts, widow.
Charles Wilch.
John Turner.
M'r's Ledsmar Ramsdel.
William Fox.
Philany Sargent.
John Geayerich.
Philip Eichom.
Barbara Eichom.
Lewis E. Reed.
Levi Loucks.
David Gordon.
Sam. Gray.
William Barton.
Jacob Tanner.
Benjamon Garner.
R. M. Smith.
Jacob W. Eichom.
Geo. A. Strough.
Francis A. Villey.
John Brelsch.

Halsey Ellis.
William McKnight.
Michael (his X mark) McCormick,
Michael (his X mark) McCormick, rep. Ellick & McCormick on ass't-roll.
M'r's George Mayer, j'r.
S. D. Priest.
Valentine Hayes.
George Pilger.
G. F. Simmerman.
Edmund Sargent.
Abram Smith.
George Mayer.
Philip Zimmer.
Perley R. Foot.
Byron J. Strough.
Ewen Jeffers.
Charles Watz.
Frederick Snell.
W'm Mahama.
Hiram Dodge.
John Dorr.
A. P. Balts.
Nelson Walts.

Jacob Snell.
Henry Haller.
M'r's Solon Arnold.
John Wright.
Harvey Silley.
Philip Rish.
David A. Aldrich.
H. M. Stevens.
A. E. Dewey.
Alonza Church.
Joseph Carter.
Robert (his X mark) Delay.
Simeon Smith.
Alfred J. Wooledge.
Elizae Dewey.
Louise Tallman.
Walter Robinson.
Simon Folts.
Samuel Harris.
Sarah V. Du Bois.
Elias Getman.
Elias Dorr.
John S. Dubois.
Jeremiah Petrie.
H. M. Stevens.
A. E. Dewey.
J. Bushnell.
Anson Harder.
William Johnson.

Zenas A. Loucks.
90 John Kilborn.
Elizar Dewey. } Dewey & Brown on ass't-roll.
Belcher A. Brown. }
Lansing Quell.
M'r's Wena How.
W'm Whaley.
W'm Whaley.
W. S. Dan'l Wilders.
Jacob C. Getman.
Hollis Gordon.
Peter Mathan.
C. P. Rood.
S. D. Flansburgh.
Romain Loucks.
Henry Dorr.
John (his X mark) Hunter.
John A. Snell.
Albert Priest.
Michael J. Hughes.
G. F. Baltz.
Stephen Scoville.
George Heyl.
Clarissa Evans.
S. W. Gates.
George W. Jennings.
E. E. Garbell.
William R. Larabee.
J. C. Van Epps.
B. F. Sargent.
100 Abram Raught.
Alex. Ford.
Seril Kenyon.
Jeremain Tallman.
W. S. Lewis.
Sarah M. Spaulsbury.
Polly Eber.
H. B. Edwards.
William Timerman.
Reuben Timerman.
Horace Gorlock.
A. M. Loucks.
Valentine Brightwiser.
Anthony Herbercht.
M'r's Eve. Jenkins (M'r's Jacob Jenkins on the asst. roll).
Conrad (his X mark) Shimel.
Jeremiah Timerman.
Jason D. Timermen.
J. M. Beardsley.
Adam Fort.
M'r's A. Hughes.
Joseph Winom.
Alfred Woodledge.
Walter Loucks.
Clark W. Sargent.
Jacob A. Klock.
John Foot.
George Bushnell.
Philip Bushnell.
L. D. Simmons.
Elijah Klock.
Nelson Banter.
Zenas A. Loucks.
Ruth Schram.
L. T. Ford.
Volney Barden.
Patrick J. Hughes.
George Bushnell.
A. J. Snell.
Widow Erchbacher.
Jane Fredenburgh.
J. A. Taylor.
George Lowmine.
R. W. Gates.
William Sargent.
S. W. Sargent.
Levi Klock.
L. C. Goodrich.
Samuel Kilborn.
Aurelia M. Tarbell.
Peter Welles.
John Priest.
Daniel Strough.
Mary (her X mark) Sargent.
Gustavus Turner.
David Falts.
Sophia E. Graham.
Daniel Eddy.
M'r's J. E. Lewis.
John Shaulsbury.
B. O. Edmonds.
H. T. Timerman. } Rep. T. S. Timerman & Co. on asst. roll.
C. C. Timermen. }
G. H. Timerman. }
Abram Garlock.
E. Timerman.
Elizabeth Hughes.
Benjamin Shimel.
Soloman Pickard.
Merrick Pickard.
M'r's Mary (her X mark) Barlow.
John Petrie.
George Eckert.
Mariel Samuel.
Margaret Gubbleo.
Warren R. Smith.
H. F. Timerman.
Asa (his X mark) Bowen.
Benjamin Calhoun.

W'm M. Laralee.
E. J. Wright.
U. F. Ford.
Charles A. Beckleam.
Homar W. Beardsley.
101 Daniel R. Larabee.
E. C. Cummings.
Lansing Larabee.
Nathan Holloway.
George W. Gould.
Joshua Wiley.
George Sheley.
Ester (her X mark) Mercy.
W. C. Garner.
Samuel Patterson.
James Spaulsbury.
T. W. Dennis.
Pulman Gardner.
Levi Garlock.
Peter Proper.
W. C. Smith.
Nathan Holloway.
Alphonsa Case.
Levi (his X mark) Prime.
W'm Nunn.
H. P. Morse.
W. M. Nunn.
John Keech.
John Harden.
Melvin Burton.
Thaddeus Brooks.
Irwin Hunter.
John Malterson.
William Rodgers.
102 Edgar Collins.
W'm Sherman.
William Rees.
G. H. Dorr.

Otis N. Britton.
M'r's E. C. Van Dewalker.
William Jodes.
Samuel J. Gibbens.

Matthews Hannahs.
George Baltz.
W'm M. Wiley.
F. Paterson.
Green Packer.
Jonah Paterson.
Valentine Workman.
A. J. Spaulsbury.
A. W. Dennis.
O. S. Burgen.
Daniel C. Hawn.
E. M. Robbins.
Robert Smith.
John Keech.
Henry P. McCanty.
Richard Mahar.
Robert Lone.
Edward Bartin.
Eldridge G. Robbins.
John Moone.
Jacob H. Post.
Henry Lfieur.
J. A. Wagner.
S. D. Reed.
John H. Banter.
S. F. Fuller.
Emeline Hoover.
Ch. Schollenberg.
T. R. Stackhouse.
Hamilton Brooks.
Harrison Cole.
David S. Rees.
Halsey A. Ellis.

103 Before Hon. A. H. Sawyer, county judge of Jefferson County.

In the matter of the petition of Russel B. Biddlecome and others for the appointment of commissioners for the town of Orleans, to issue the bonds of said town, in said county, and subscribe for stock of the Clayton & Theresa Railroad Company:

JEFFERSON CO., *ss:*

Russel B. Biddlecome, being duly sworn, saith that he is one of the petitioners hereto annexed; that he has read the said petition and knows the contents of the same, and that the same is true to his knowledge, except as the matters stated on information and belief, and as to those he believes the said petition to be true.

RUSSEL B. BIDDLECOM.

Sworn to before me this 31 day of May, 1871.

A. H. SAWYER,
County Judge.

Before Hon. A. H. Sawyer, county judge of Jefferson Co.

In the matter of the petition of Russel B. Biddlecom and others, for the appointment of commissioners for the town of Orleans, to issue the bonds of said town, and subscribe for stock of the Clayton and Theresa Railroad Company.

104 Application having been made to me by the petition of Russel B. Biddlecom and others, tax-payers of the town of Orleans, in said county, verified by one of the petitioners, which petition purports to be made by a majority of the tax-payers of said town whose names appear upon the last preceding assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of said town, and sets forth that they are such majority of tax-payers and represent such majority of taxable property, and that they desire said town shall create and issue its bonds to the amount of eighty thousand dollars, but not exceeding twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll, and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company in this State:

Now, on motion of Wayland F. Ford, counsel for the said petitioners, it is ordered that a notice shall be forthwith published in the Watertown Daily Times, Reunion, and Watertown Post, three newspapers published in the city of Watertown, in the said county of Jefferson, directed to whom it may concern, setting forth that on the 5th day of June, 1871, at 10 o'clock in the forenoon of that day, at the court-house in the city of Watertown, in said county, I will proceed to take the proof of the facts set forth in said petition, as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by them.

Dated Watertown, May 12, 1871.

A. H. SAWYER,
County Judge of Jefferson Co.

105 To whom it may concern:

Application having been made to me by petition by Russel B. Biddlecom and others, claiming to be a majority of taxpayers of the town of Orleans, and representing a majority of taxable property of said town as appearing by the last assessment-roll thereof, for the appointment of three commissioners to subscribe in the name of the town of Orleans eighty thousand dollars to the capital stock of the Clayton & Theresa Railroad Company, and issue bonds of the said town to the like amount in payment of said stock: Notice is hereby given that on the 5th day of June, A. D. 1871, at ten o'clock in the forenoon of that day, at the court-house in the city of Watertown, I will proceed to take proof of the facts set forth in the said petition, as to the number of tax-payers joining in the petition, and as to the amount of taxable property represented by them.

Dated Watertown, May 12, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

STATE OF NEW YORK,
County of Jefferson, ss:

Frank S. Reynolds, of the city of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is foreman in the office of the Watertown Post, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the no-

tice of which the annexed is a printed copy has been regularly
106 published in said newspaper once in each week for three weeks, successively, commencing on the 18th day of May, 1871.

FRANK S. REYNOLDS.

Sworn before me this 5th day of June, 1871.

THO'S F. KEARNS,
Notary Public.

STATE OF NEW YORK,
Jefferson County, ss:

John M. Tamblin, of the village of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is a foreman of the office of the Watertown Reunion, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper, once in each week for two weeks, successively, commencing on the 18th day of May, 1871.

J. M. TAMBLIN.

Sworn before me this 5th day of June, 1871.

THO'S F. KEARNS,
Notary Public.

STATE OF NEW YORK,
Jefferson County, ss:

L. Ingalls, of the city of Watertown, being duly sworn, says that he is one of the publishers of the Watertown Daily Times, a newspaper printed and published in the city of Watertown, Jefferson County, and State of New York, and that a notice, of which the annexed is a
107 printed copy, has been regularly published in said newspaper once a week for at least 4 successive weeks, commencing on the 12th day of May, 1871.

L. INGALLS.

Subscribed and sworn before me this 5th day of June, 1871.

THO'S L. KEARNS,
Notary Public.

In the matter of the petition of Russel B. Biddlecom and others for the appointment of commissioners to subscribe in the name of the town of Orleans to the stock of the Clayton & Theresa Railroad Company.

The whole amount of taxable property appearing on the assessment-roll of the town of Orleans for the year 1870 is $498,420, and the whole number of names of tax-payers appearing upon said roll is 471, including the name of Jeremiah Petrie, who appeared before me upon the hearing and desired to join in the petition, and estimating the $4,200 assessed to him, the petitioners number 283 of the tax-payers and represent $285,960 of the taxable property of the town of Orleans appearing upon the assessment-roll of said town for 1870.

Upon the hearing various questions were raised by the contestants as to the validity of the assessment-roll of the town of Orleans for 1870, the constitutionality of the acts of the legislature under which
108 the proceedings were instituted, the competency of proof offered by the petitioners, etc.; but as similar questions had risen and been recently decided by me in the matter of the petition of tax-payers of Clayton, these various questions were, in conformity with the decision in that case, disposed of upon the hearing, and the objections of the contestants overruled.

This case, however, presents two questions which did not arise in the matter of the petition of tax-payers of Clayton.

It is claimed by the contestants here that a number of the petitioners signed the petition in ignorance of its contents or character, being misled by representations made to them at the time of signing by persons engaged in procuring signatures to the petition, and supposing that the paper signed by them was a remonstrance against a railroad, or expressing the choice of the people for a particular route, and not a petition, so called, for bonding the town.

Numerous tax-payers of the town whose names appear upon the petition have appeared before me and testified to that effect and that they would not have signed such a petition had they had any knowledge of its true character, and ask to have their names stricken from the petition.

Wherever it clearly appears from the evidence that persons signed the petition from ignorance of its character, supposing it to be a
109 paper of entirely different nature, I entertain no doubt that the names of such persons should not be counted as petitioners.

Evidence was given on the part of the petitioners showing that the contents of the petition were fully made known to each of these petitioners before signing, and I have no reason to think that any attempt made by any one engaged in procuring signatures to the petition to mislead any petitioners as to the true nature or character of the petition.

I have reason to believe, however, that the following persons, viz, Benjamin Shemel, Eve Jenkins, Elizabeth Hughs and Valentine Brightweiser, either through an imperfect knowledge of the English language or for some other cause, failed to comprehend the statement made to them by the persons who procured their signatures, and signed the petition in ignorance of its true character, and that they would not have signed such a petition had they understood its purport. The names of these persons should not be counted, therefore, as petitioners in this matter.

Several other persons appeared before me and testified that they signed the paper in ignorance of its contents or character, and that they would not have signed had they such knowledge.

But from the evidence of these persons themselves, taken in connection with their appearance upon the stand, and all the circumtances of the case, I cannot regard such claim on their part as well founded.
110 It is also claimed by the contestants that numerous petitioners signed the petition with full knowledge of its contents and character, but were induced to do so by representations and statements by persons engaged in procuring signatures to the petition, to the effect that a sufficient number of signatures had already been obtained to the petition, or a sufficient number certainly would be, to bond the town, or that unless a majority of the names of tax-payers were procured to this petition, a railroad would be built through the town upon another route, and various statements of like character, all of which were untrue in fact.

It being conceded that these persons were fully acquainted with the nature and contents of the petition at the time they signed the same, they must be regarded as petitioners in the matter; and I have no power in a proceeding of this character to enter into an investigation of statements or representations made to induce such persons to become petitioners, or as to the truth or falsity of such representations.

Upon the argument, counsel for the contestants asked to have stricken from the petition the names of such petitioners as appeared upon the hearing and made such request.

The act of the legislature under which these proceedings were instituted, in express terms permits any tax-payers of the town to
111 appear before the judge upon the hearing, and then and there join in the petition, but no provision is made for the withdrawal of any petitioner, and it seems to me there can be no question that such provision would have been made had it been the intention of the legislature to permit it.

The question is very fully discussed in the opinion of Judge Prindle, in the matter of tax-payers of the town of Greene (38 How. R. R., 515), and I see no reason to dissent from his conclusions.

After striking from the petition the four names hereinbefore mentioned, and deducting the amount of taxable property represented by them, $7,755, there still remains upon the petition the names of 279 tax-payers, representing $278,215 of the taxable property of the town of Orleans, appearing upon the assessment-roll of 1870.

I therefore find and decide that the petitioners in this matter represent a majority of the tax-payers of the town of Orleans, as shown by the last preceding assessment-roll of said town, and that they represent a majority of the taxable property upon said roll.

And I appoint George H. Strough, Samuel W. Gales and Simon Folts, freeholders, residents and tax-payers to be commissioners to subscribe in the name of said town to the capital stock of the Clayton & Theresa Railroad Company, and to issue the bonds of said town therefor.

June 30th, 1871.

A. H. SAWYER,
County Judge of Jefferson Co.

112 In the matter of the petition of tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton & Theresa Railroad Company.

I, Azariah, H. Sawyer, county judge of the county of Jefferson, by virtue of the authority in me vested by the laws of the State of New York, do hereby appoint and commission George H. Strough, Samuel W. Gates and Simon Folts, three freeholders and residents and tax-payers, within the corporate limits of the town of Orleans, in the county of Jefferson, State of New York, commissioners in and for the said town of Orleans, to create and issue the bonds of said town, to the amount of eighty thousand dollars ($80,000) and to invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company, and to do all other things provided for, and as are incumbent on them as such commissioners, by chapter 907 of the laws of 1869, of the State of New York, and the various acts amendatory thereof.

In witness whereof I, Azariah H. Sawyer, county judge as aforesaid, have hereunto set my hand the 1st day of July, 1871.

A. H. SAWYER,
County Judge of Jefferson, Co.

113 In the matter of the petition of tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company.

JEFFERSON CO., *ss:*

The undersigned, George H. Strough, Samuel W. Gates, and Simon

Folts, being severally duly sworn, doth each for himself make oath and swear that he will faithfully discharge all the duties of the office of commissioner in and for the town of Orleans, in the county of Jefferson, N. Y., to create and issue the bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company, and to do all other acts and things provided for and made incumbent on him as such commissioner by chapter 907 of the laws of 1869, of the State of New York, and the various acts amendatory thereof, to which office he has been appointed, according to the best of his ability.

GEORGE H. STROUGH.
S. W. GATES.
SIMON FOLTS.

Subscribed and sworn before me, this 25th day of July, 1871.
EDGAR W. BEDELL, *J. P.*

Filed July 27, 1871.

114 In the matter of the petition of tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton & Theresa Railroad Company.

Whereas on the 3d day of May, 1871, sundry tax-payers of the town of Orleans, in the county of Jefferson, State of New York, made application to me, A. H. Sawyer, county judge of the said county of Jefferson, by petition, verified by one of said petitioners, setting forth they are a majority of the tax-payers of said town, and whose names appear upon the last preceding tax-list or assessment-roll of said town, and do represent a majority of the taxable property in the corporate limits of said town, and that they desire that the said town of Orleans create and issue its bonds to the amount of eighty thousand dollars, and invest the same or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18th, 1869, and the acts amendatory thereto.

And whereas I, the said county judge, did thereupon on the 12th day of May, 1871, pursuant to statute, duly made an order that a notice be forthwith published in the Watertown Daily Times, the Water-
115 town Re-Union, and the Post, three newspapers published in the city of Watertown, in the said county of Jefferson, directed "To whom it may concern," and setting forth that on the day therein named, being the 5th day of June, 1871, at 10 o'clock in the forenoon of that day at the court-house, in the city of Watertown, in said county, I would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by them.

And whereas, on the said 5th day of June, 1871, at 10 o'clock in forenoon of that day at the court-house, in the city of Watertown, in said county, being the time and place named in said order and notice, proof by affidavit having been made before me of the publication of said notice, pursuant to the order aforesaid, sundry of the parties interested in said matter and proceedings, and in favor of said application, appeared in person and by counsel before me, Messrs. Hubbard & Wright appearing as counsel in behalf of petitioners, and sundry persons con-

testants and opposed to said application appeared in person, and by Levi H. Brown, esq., and John Lansing, esq., as their counsel, and I then and there proceeded to take the proofs provided for by the statute aforesaid.

The hearing of the matter and proceedings was continued several days, and during said hearing Jeremiah Petrie, another tax-payer of said town of Orleans, appeared in person before me and expressed
116 a desire to join as a petitioner in said petition, and did so join therein, and after hearing the proofs and allegations therein of the said parties petitioners and contestants in the premises, and taking such proofs touching the allegations contained in such petition as seemed necessary and pertinent, and after hearing the argument of the counsel aforesaid, it appeared satisfactorily to me, the said county judge, that the allegations contained in the said petition were established and were true, and that said petitioners and the said Jeremiah Petrie, tax-payers of said town as aforesaid, who appeared before me and expessed a desire to join as petitioner, and did so join therein as aforesaid, do represent a majority of the tax-payers of said town of Orleans, as shown by the last preceding tax-list or assessment-roll, being the tax-list or assessment-roll of the year 1870, and do represent a majority of the taxable property upon said list or roll, and that the amount of said bonds named in said petition does not exceed 20 per cent. of the whole amount of taxable property of said town, as shown by said tax-list or assessment-roll. That the said town of Orleans is a municipal corporation, and that there has not been a railroad already constructed and in operation in or through said town.

Now, therefore, I, Azariah H. Sawyer, county judge of the county of Jefferson, do adjudge and determine that said petitioners and
117 other tax-payers of the said town of Orleans, who did then and there appear before me and express a desire to join as petitioner in said petition, and did so join as aforesaid, whose names appeared on the last preceding tax-list or assessment-roll of said town, do represent a majority of the tax-payers of the said town of Orleans, as shown by the last preceding tax-list or assessment-roll thereof, being the tax-list or assessment-roll for the year 1870, and do represent a majority of the taxable property of said town as shown upon such tax-list or assessment-roll.

And I order and direct that this adjudication be entered of record in the office of the clerk of Jefferson County.

And I, the said county judge, do further order that George H. Strough, Samuel W. Gates, and Simon Folts, three freeholders, residents and tax-payers within the corporate limits of the said town of Orleans, be, and they are, appointed commissioners for the said town, with the powers and for the purposes declared and provided in and by chapter 907 of the laws of 1869 of the State of New York, and the various acts amendatory thereof, and that a commission issue to them accordingly.

In witness whereof I, Azariah H. Sawyer, county judge as aforesaid, have hereunto set my name this first day of July, 1871.

A. H. SAWYER,
County Judge of Jefferson Co.

Judgment signed July 3, 1871, at 5 p. m.

GEORGE COLE,
Deputy Clerk.

Filed July 3d, 1871, at 5 p. m.

118 COUNTY OF JEFFERSON:

John Tamblin, of the city of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is a foreman in the office of the Watertown Re-Union, a weekly newspaper, printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper once in each week for three weeks successively, commencing on the 6th day of July, 1871.

J. M. TAMLIN.

Sworn before me this 21st day of July, 1871.

W. J. SMITH,
Notary Public.

Filed August 12, 1872.

STATE OF NEW YORK,
County of Jefferson:

George C. Bragdon, of the city of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is publisher of *of* the Watertown Post, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper once in each week for three weeks successively, commencing on the 6th day of July, 1871.

GEORGE C. BRAGDON.

Sworn before me this 31st day of July, 1871.

FRED EMERSON,
Notary Public.

Filed August 12th, 1871.

119 STATE OF NEW YORK,
Jefferson County, ss:

Charles R. Skinner, of the city of Watertown, being duly sworn, says that he is one of the publishers of the Watertown Daily Times, a newspaper printed and published in the city of Watertown, Jefferson County, and State of New York, and that a notice of which the annexed is a printed copy has been published regularly in said newspaper once a week for at least three successive weeks, commencing on the 3d day of July, 1871.

CHA'S R. SKINNER.

Subscribed and sworn before me this day of , 18 .

JOHN H. NAPIER,
Notary Public.

Filed August 12, 1871.

STATE OF NEW YORK,
Jefferson County, ss:

I, Jacob Stears, j'r, county clerk in and for the county of Jefferson, do hereby certify that I have compared the preceding or foregoing with the original roll or record of proceedings, adjudication, and determination by and before A. H. Sawyer, the county judge of Jefferson County, filed in this office July 3, 1871, at 5 p. m., and remaining on file and of record in this office, and that the same is a correct transcript from and of said original roll or record, and of the whole thereof. And

120 that each of the foregoing papers is a correct copy of and transcript from an original paper on file in this office constituting or attached to said roll, and of the whole of said original paper.

In testimony whereof I have hereunto set my hand and official seal this 11th day of June, 1875.

[L. S.] J. STEARS, J'R, *Clerk.*

121 It was conceded that the plaintiff was at and before the commencement of this suit, and is, a citizen of the United States, and of the State of Illinois, and was and is a resident of Chicago in that State, and that the defendant, the Town of Orleans, was and is one of the towns of the county of Jefferson, in the State of New York.

RUSSEL B. BIDDLECOM was duly sworn on the part of the plaintiff and testified as follows:

I reside in the town of Orleans, Jefferson Co., N. Y. I was secretary and treasurer of the Clayton & Theresa Railroad Company in the year 1871 & 1872. I knew Mess'rs Strough, Gates, and Folts, the three commissioners; they are residents of that town. The signatures in this subscription book are theirs; they were made at the date here stated, April 2, 1872.

(The plaintiff's counsel then offered in evidence the subscription to the capital stock of the Clayton & Theresa Railroad Company made by said commissioners in the name of the said town of Orleans. To which the defendant's counsel objected on the ground that it was made pending a writ of certiorari from the proceedings of the county judge, to which proceedings the said commissioners were parties, and also because it is not shown that any commission or appointment by the county
122 judge was delivered to the commissioners; which objection the court overruled and the defendant duly excepted.)

And thereupon the plaintiff read in evidence the said subscription, which was in the words and figures following:

Subscription book of the Clayton and Theresa Railroad Company.

A company having been formed under law of the State of New York, April 2d, 1850, entitled "An act to authorize the formation of railroad corporations and regulate the same," and of the several acts amendatory of the same, and in addition thereto to construct and operate a railroad from Clayton to a point on the Black River and Morristown Railroad, at or near the village of Philadelphia, in the county of Jefferson, under the corporate name of the "Clayton and Theresa Railroad Company," and the articles of association with the necessary affidavits having been duly filed for the purpose of making subscriptions to fill up the capital stock of the said company:

Now, in consideration of the premises of the stock to be issued to us, and of our mutual subscriptions, we, the undersigned, do each for himself agree to take the number of shares set opposite to our respective names of the capital stock of the said Clayton and Theresa Railroad Company, each share to be one hundred dollars, and do agree to and with said Clayton & Theresa Railroad Company to pay the same at the office of the treasurer of the said company, in the village of La
123 Fargeville, or where the same may be located, in such installments as the said company may deem proper.

Dated Nov. 13, 1871.

Subscribers' names.	Post Office address.	No. of shares.	Amount subscribed.	Amount paid.
Town of Orleans by—				
George H. Strough..... (Commissioners)	La Fargeville.....	Eight hundred	80,000 00	$80,000 00 April 2, 1872.
Sam. W. Gates..... (Commissioners)	La Fargeville.....			
Simon Folts ..... (Commissioners)	La Fargeville.....			

The witness continued:

"The signatures on the one hundred and forty bonds shown me are those of the commissioners. The commissioners at one time issued one hundred and sixty bonds of $500 each, amounting to $80,000. They were numbered from 1 to 160 inclusive. The 160 bonds and these 140 bonds are numbered from 21 to 160 inclusive.

(The plaintiff's counsel then offered in evidence the said 140 bonds of the town of Orleans, issued by said commissioners.

To which the defendant's counsel objected on the grounds: 1st, That on their face the bonds are void, because not issued in pursuance of the provisions of the laws of 1869, which authorizes the commissioners to issue bonds payable in not less than 30 years, or the act of 1871, which allows the issue to be made payable in less than 30 years, but
124 does not authorize them to issue bonds redeemable at any time in their discretion. The time of payment must be fixed. Which objection was overruled, and the defendant's counsel duly excepted to such ruling.

The said 140 bonds were then read in evidence.)

The following is a copy of bond No. 21, except the coupon attached thereto, viz:

No. 21. UNITED STATES OF AMERICA. $500.

State of New York, town of Orleans. In aid of the Clayton & Theresa Railroad Company.

(Issued by virtue of chap. 907 of the laws of the State of New York, passed May 18, 1869, and of the several laws amendatory thereto.)

Know all men by these presents that we, George H. Strough, Samuel W. Gates, and Simon Folts, commissioners, under the acts above referred to, for the town of Orleans, in the county of Jefferson and State of New York, upon the faith and credit and in behalf of the said town, and confirmed by a majority of the tax-payers, representing a majority of the taxable property of the same, according to said acts, for value received, do hereby promise to pay to the bearer hereof the sum of five hundred dollars, on the fifteenth day of February, in the year one thousand eight hundred and ninety-four, at the Metropolitan Bank, in the city
125 of New York, redeemable nevertheless at the option of the said commissioners, or their successors, on the fifteenth day of February or August in any year after the year 1892, with interest at seven per cent. per annum, payable semi-annually on the fifteenth days of February and August in each year, at the same place above mentioned for the place of payment of the principal, on presentation and surrender of the proper coupon for such interest hereto annexed.

In witness whereof we have hereunto set our hands and seals, at La Fargeville, N. Y., this fifteenth day of February, 1872.

GEORGE H. STROUGH, [SEAL.]
SAM'L W. GATES, [SEAL.]
SIMON FOLTS, [SEAL.]
Commissioners.

Registered in Jefferson County clerk's office April 3d, 1872.
J. STEARS, Jr., *Clerk.*

(Endorsed:) State of New York, town of Orleans. Bond No. 21, $500; seven per cent.; payable in New York February 15, 1894. Interest February & August.

The other bonds were the same as the above, except as hereinafter stated. To each of the bonds were annexed coupons for each installment of interest, to grow due according to the term of the bonds. The coupons were in the following form, except as to the time of payment and the No. of the bonds, viz:

$17.50. The Town of Orleans, on the 15th day of February, 1874, will pay seventeen $\frac{50}{100}$ on this coupon, at the Metropolitan Bank, in
126 the city of New York.

No. 21.

GEORGE H. STROUGH,
Commissioner.

Of the said bonds—

Nos. 21 to 32 inclusive became due on the	13th	of	February,		1894.
Nos. 33 to 47,	the 15th	"	"		1895.
" 49 to 64,	"	"	"	"	1896.
" 65 to 80,	"	"	"	"	1897.
" 81 to 96,	"	"	"	"	1898.
" 97 to 112,	"	"	"	"	1899.
" 113 to 128,	"	"	"	"	1900.
" 129 to 144,	"	"	"	"	1901.
" 145 " 160,	"	"	"	"	1902.

On the face of each of the said bonds was a certificate signed by the clerk and authenticated by the seal of the county of Jefferson, of which the following is a copy, viz:

Registered in Jefferson County clerk's office April 3d, 1872.
[SEAL OF JEFFERSON COUNTY.] J. STEARS, J'R, *Clerk.*

The witness continued:

Those bonds for $80,000 were delivered to the Clayton & Theresa Railroad Company on the 3d or 4th of April, 1872. They were registered the 3d or 4th of April, 1872. These bonds were delivered to the Clayton and Theresa R. R. Company for the eight hundred shares of
127 stock in that company, amounting at par to $80,000 subscribed for by said commissioners as aforesaid, and scrip for eight hundred shares of the stock was issued to the commissioners for the town. This is the scrip I issued to the commissioners. I dated it the 2d April.

The plaintiff's counsel then read in evidence the said scrip, which was in the words and figures following:

No. 1.] *Certificate of stock.* [800 shares.

Capital stock $300,000. Shares $100 each.

Clayton & Theresa Railroad Company.

This is to certify that the town of Orleans is entitled to eight hundred shares of one hundred dollars each of the capital stock of the Clayton and Theresa Railroad Company, transferrable only on the books of the said company by the said town of Orleans, by its commissioners, under the direction of the said town, upon the surrender of this certificate.

Witness the seal of the Clayton and Theresa Railroad Company, at La Fargeville, N. Y., this second day of April, A. D. 1872.

[L. S.] ALDEN F. BARKER,
President.

RUSSEL B. BIDDLECUM,
Secretary.

[25-cent U. S. I. R. stamp affixed and cancelled.]

The witnessed continued:

At the time the commissioner delivered the bonds to the rail-
128 road company for the stock the scrip-book or printed forms for scrip were not ready, and the said railroad company then executed to the commissioners of the town of Orleans a receipt for the payment, and as soon as the scrip-book was ready the above-mentioned scrip was executed and delivered to the commissioners.

The following is the receipt given, viz:

Certificate of railroad co.

No. 133.] Clayton & Theresa Railroad Company. [800 shares.

Shares $100 each.

This is to certify that the town of Orleans has paid eighty thousand dollars, it being for the whole of the instalments (100 per cent.) on eight hundred shares of the capital stock of the Clayton and Theresa Railroad Company.

In witness whereof the said company have caused this certificate to be signed by their president and countersigned by their treasurer this the second day of April, 1872.

A. F. BARKER,
President.

RUSSEL B. BIDDLECOM,
Treasurer.

(Written across the face in red ink:)

Issued certificate of stock dated April 2, 1872. Delivered to Geo. H. Strough, com'r.

R. B. BIDDLECOM, *Treas.*

[5-ct. U. S. I. R. stamp affixed and cancelled.]

I delivered this scrip to them about a month after. There has been no change in the commissioners to my knowledge, and they hold this scrip still, and I got it from their attorney to bring here.

On his cross-examination the witness said:

129 I was one of the petitioners in the proceedings before Judge Sawyer, and Strough, Gates, & Folts were each also petitioners and the persons whose names appear in the petition. I was present at the execution of these bonds at Watertown, Jefferson County.

The defendant's counsel then asked the witness the following:

Question. At that time you knew of the existence, and had employed counsel to defend the certiorari proceedings?

(To which the plaintiff's counsel objected, on the ground that there was yet no evidence of any certiorari, or to whom it was directed, and that this testimony was not competent or material till such evidence should be given, and the question was waived for the present.)

On redirect examination the witness said:

The bonds were signed & registered there at the clerk's office in Watertown. All the bonds contained the same clause as to being redeemable in less time than that named.

The plaintiff's counsel then offered in evidence the coupons for instalment of interest which fell due Feb. 15, 1874, on said 140 bonds above given in evidence, amounting to $2,450, to which the defendant's counsel objected as only being signed by one commissioner, which objection was overruled by the court, and the defendant duly excepted.

130 The said 140 coupons were then read in evidence. They were in the form of the coupon above set out except the number varied, each being numbered according to the number of the bond to which it was attached.

The plaintiff's counsel then offered in evidence the coupons for instalment of interest which fell due on said bond August 15, 1874. To which the defendant's counsel objected as only being signed by one commissioner, which objection was overruled by the court, and the defendant duly excepted to such ruling. The said last-named coupons were then read in evidence, and amounted to $2,450. They were in the same form of the coupon above set out, except as to the time of payment, and the number of each was the same as the number of the bond to which it was attached.

The plaintiff's counsel then offered in evidence the coupons for instalment of interest due on said bonds Feb'y 15th, 1875; to which the defendant's counsel objected as only being signed by one commissioner; which objection was overruled by the court, and the defendant duly excepted to such ruling.

The said last-named coupons were then read in evidence, and amounted to $2,450. They were in the same form as the one above set out, except as to time of payment and the number on each, which corresponded with the bond to which it was attached.

The amount of said coupons for said three instalments of inter-

131 est, with interest on the same from the time they respectively became due and payable, was $7,776.43.

The plaintiff's counsel here rested his case.

The defendant, to maintain the issue on its parts, offered in evidence a duly-authenticated and admitted copy of the judgment record in the case of The People on relation of W'm B. Irwin and others against Azariah H. Sawyer, county judge of Jefferson County, and Jacob Stears, j'r, county clerk of said county, including the certiorari issued October 12, 1871, and served October 14, 1871, on the said clerk and county judge, the order for which certiorari, made September 12, 1871, entered September 30, 1871, and notice thereof to attorneys for petitioners; the judgment of affirmance by the supreme court; the appeal to the court of appeals; the remittitur, decision, and judgment of the court of ap-

peals reversing the judgment of the supreme court and of the county judge, and the order of the supreme court of March 19, 1873, making the judgment of the court of appeals the judgment of the supreme court and county court, entered in clerk's office of Jefferson County, and the notice of appearance in court of appeals from the attorney of the petitioners, served October 12, 1872, and copy of the minutes of the rule-book of the supreme court of New York, rep't in said clerk's office, showing the date of the different proceedings in said proceedings, and time of filing of papers & records, and entry of orders therein. To which the plaintiff's counsel objected, and the court overruled the
132 objection, saying he would receive the evidence and decide upon its effect afterwards; and the said record and papers were received in evidence and read, and were in the words and figures following, to wit:

134, 133 *Papers on appeal.*

STATE OF NEW YORK.

Court of appeals.

THE PEOPLE, ON RELATION OF WILLIAM B. Irwin, Cornelius Bort, and Albion A. Hughes, appellants,
ag'st
AZARIAH H. SAWYER, COUNTY JUDGE OF Jefferson County, and Jacob Stears, j'r, county clerk of Jefferson County, respondents.

135 CLERK'S OFFICE.

JEFFERSON COUNTY, *ss:*

I, Jacob Stears, j'r, clerk of the county of Jefferson, and of all the courts of record in and for said county, do hereby certify that I have compared the copy of order hereto attached with the original order entered in this office, and that the same is a true and correct transcript thereof and of the whole of said original.

Witness my hand and seal of office this 12 day of June, 1875.

[L. S.] JACOB STEARS, J'R, *Clerk*,
By GEO. COLE, *Dep. Clk.*

136 At a special term of the supreme court of the State of New York, held at the court-house in the city of Utica, in the county of Oneida, on the 12th day of September, 1871:

Present, Hon. C. H. Doolittle, justice.

THE PEOPLE OF THE STATE OF NEW YORK on relation of William B. Erwin, Cornelius Bort, & Albion A. Hughes,
ag'st
AZARIAH H. SAWYER, COUNTY JUDGE OF Jefferson County, & Jacob Stears, j'r, county clerk of the county of Jefferson.

On reading affidavit of William B. Erwin, one of the relators, and the roll of proceedings in the matter of the tax-payers of the town of Orleans to create and issue bonds in aid of the Clayton & Theresa Railroad

Company, filed in Jefferson County clerk's office on the 3d day of July, 1871, & after hearing M'r Lansing, of counsel for the relators, and M'r Hubbard, opposed, it is ordered that a writ of certiorari be, and is hereby, allowed, and that the same issue to said Azariah H. Saw-
137 yer, county judge of the county of Jefferson, and to Jacob Stears, j'r, county clerk of the county of Jefferson, commanding the said county judge to certify to this court at the next general term of this court to be held in the fourth judicial department of the State of New York, whenever the same may be held, under his seal, as fully and amply as the same may remain before him, all his proceedings in the matter of the petition of the tax-payers of the town of Orleans, in the county of Jefferson aforesaid, to create and issue bonds of said town to the amount of $80,000, & invest the same or the proceeds thereof in the stock of the Clayton & Theresa Railroad Company, and especially all testimony which was taken before him on such proceedings and all affidavits, paper writings and exhibits, & orders which were made by him, or used before him, on such proceedings which are not contained in the roll of proceedings in said matter filed with the clerk of the county of Jefferson, and commanding the said county clerk to certify to this court
137½ at such general term under his official seal as fully and amply as the same may remain before him and in his office the roll of proceedings in the said matter and all other matters or things pertaining to the said matter of the prosecution thereof, which are now on file in his office or recorded therein, to the end that the said supreme court may cause to be done further thereupon what of right and according to law ought to be done; and let the affidavit used on this motion be filed in Jefferson County, and this order be entered in said county.

C. H. D.

(Endorsed:) Allowed. C. H. D. Entered. Filed Sept. 30, 1871.

(On the back:) D. A. Ex. 1. 15 June, 1875.

138 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeal' held at the capitol in the city of Albany, on the 24th day of February in the year of our Lord one thousand eight and seventy-three, before the judges of said court.

Witness, the Hon. Sanford E. Church, chief judge presiding.

E. O. PERRIN, *Clerk.*

Remittitur, Feb'y 28th, 1873.

THE PEOPLE ON RELATION OF WILLIAM B. Irwin & o'rs, appellants,
ag'st
AZARIAH H. SAWYER, COUNTY JUDGE OF Jefferson County, & another, respondents.

Be it remembered that on the 26th day of August, in the year of our Lord one thousand eight hundred and seventy-two, The People ex rel. William B. Erwin & others, the appellants in this action, came here
139 into the court of appeals by Lansing & Sherman their attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the supreme court, fourth judicial department of the State of New York, and Azariah H. Sawyer, and another respondents in said action, afterwards in said court of appeals by F. W. Hub-

bard, their attorney, which said notice of appeal and the return thereto filed as aforesaid are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by M'r Levi H. Brown, of counsel for the appellants, and by M'r F. W. Hubbard, of counsel for the respondents, and after due deliberation had therein, did order and adjudge that the judgment of the supreme court and the order of the county judge appealed from in this action to this court be, and the same is hereby, reversed. And it was further ordered and adjudged that the proceedings be, and the same hereby are, dismissed; and it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

139½ Therefore it is considered that the said judgment of the supreme court & order of the county judge be reversed and proceedings dismissed.

And hereupon as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justice thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justice thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

Court of appeals.

CLERK'S OFFICE,
Albany, Feb'y 28th, 1873.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals with the papers originally filed therein attached thereto.

[L. S.] E. O. PERRIN, *Clerk.*

140 STATE OF NEW YORK,
Jefferson County, ss:

CLERK'S OFFICE.

I, Jacob Stears, jr., clerk of the county of Jefferson, and all the courts of record therein, do hereby certify that on examining the records and papers on file in the clerk's office of said county, I find on file the writ of certiorari and returns thereto, with papers accompanying the same, and also order and judgment made by the supreme court in said proceeding, entered of record and filed, and also notice of appeal to the court of appeals in the words and figures following, and filed and entered at the dates indicated therein, to wit:

In supreme court.

THE PEOPLE ON RELATION OF WILLIAM B. Irwin, Cornelius Bort, and Albion A. Hughes *ag'st* AZARIAH H. SAWYER, COUNTY JUDGE OF Jefferson County, and Jacob Stears, jr., county clerk of Jefferson County, respondents.

SIR: Please take notice that the above-named relators, William B.

Irwin, Cornelius Bort, and Albion A. Hughes, appeal to the court of appeals from the order made in this proceeding at the general
141 term of the supreme court for the fourth judicial department on the 20th day of June, 1872, and entered in the clerk's office of the county of Jefferson on the 27th day of June, 1872, and from the judgment entered in this proceeding in pursuance of said order in the clerk's office of the county of Jefferson, on the first day of July, 1872, affirming the judgment and determination of the county judge of Jefferson County in the matter of the petition of the tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000 and invest the same or the proceeds thereof in the stock of the Clayton & Theresa Railroad Company, and for the sum of eighty-nine 9-100 dollars costs in favor of the respondents, against said relators, and from the whole of said judgment and order.

July 9th, 1872.

Yours, &c.,

LANSING & SHERMAN,
Attorneys for Relators.

To F. W. HUBBARD,
Attorney for Respondents, and
JACOB STEARS, jr.,
Clerk of the County of Jefferson.

Filed July 10, 1872.

STATE OF NEW YORK:

In supreme court.

The people of the State of New York, to Azariah H. Sawyer, county judge of Jefferson County, and Jacob Stears, jr., county clerk of the county of Jefferson, greeting:

Whereas, we have been informed by the complaint of William B. Irwin, Cornelius Bort, and Albion A. Hughes, residents and tax-
142 payers of the town of Orleans, in the county of Jefferson, that certain proceedings are claimed to have been had before you, the said Azariah H. Sawyer, county judge as aforesaid, under and by virtue of the provisions of chapter 907 of the laws of 1869, and the acts supplemental thereto and amendatory thereof, in the matter of the petition of the tax-payers of the said town of Orleans, to create and issue bonds of said town to the amount of $80,000 and invest the same, or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, wherein a petition was presented to you, under provisions of said law, and an order was made by you thereupon directing the notice to be published of the presentation of such petition as provided in and by said act, which notice was so duly published, and on the day mentioned in said notice the petitioners appeared before you by counsel, and the said relators hereinbefore mentioned also appeared before you by counsel, and witnesses were sworn and evidence given before you, and such action was thereupon taken by you in the premises that on the 30th day of June, 1871, you made your decision in said matter, whereby you granted the prayer of said petition and appointed three commissioners for said town, under the provisions of said act, which said decision was duly filed in the office of the clerk of the county of Jefferson aforesaid, on the 3d day of July, 1871, and we being willing, for certain reasons, to be certified of the said proceedings, all testimony which was

taken before you on such proceedings, and offers of testimony, objections and rulings therein, and all affidavits, paper writings, exhibits, and orders made by you or used before you in such proceedings, and all things appertaining thereto which are not contained in the roll of proceedings in said matter filed with the clerk of the county of Jef-
143 ferson as aforesaid, do command and strictly enjoin that you, the said Azariah H. Sawyer, do certify the same and all thereof, with all things appertaining thereto, unto our justices of the said supreme court, at the next general term of the said supreme court, to be held in the fourth judicial department of the State of New York, wherever the same may be held, under your seal, as fully and amply as the same remain before you, and you the said Jacob Stears, jr., county clerk as aforesaid, we do command and strictly enjoin that you certify under your official seal, as fully and amply as the same may remain before you and in your office, the roll of proceedings in the said matter filed in your said office, and all other matters or things pertaining to the said matter or the prosecution thereof, which are now on file in your said office or recorded therein, that our said justices may cause to be done further thereupon what of right and according to law ought to be done, and have you then there this writ.

Witness, Hon. Joseph Mullin, presiding justice of our said court for the 4th judicial department, at the court-house, in the city of Watertown, in the county of Jefferson, the 12th day of October, 1871.

JACOB STEARS, JR., *Clerk.*

LANSING & SHERMAN, *Attorneys.*

(Endorsed:) In supreme court. The People, on relation of William B. Irwin and others, ag'st Azariah H. Sawyer, county judge of Jefferson County, and Jacob Stears, jr., county clerk of Jefferson County. Certiorari. Issued and allowed by special order of the court. Jacob Stears, j'r, clerk. Lansing & Sherman, att'ys for relators. Filed Oct. 14, 1871.

144 The return to the within and foregoing writ appears by the schedule hereunto annexed.

Watertown, Dec. 22, 1871.

JACOB STEARS, J'R *Clk,*
By GEO. COLE, *Dep. Clk.*

The return of Jacob Stears, j'r, county clerk of the county of Jefferson, to the writ of certiorari hereto annexed.

In obedience to the writ of certiorari hereto annexed and to me directed and delivered, I do hereby certify and return to the justices of the supreme court—

That on examination of the files in my office, I find a certain roll of proceedings in the matter mentioned and set forth in said certiorari in the words and figures following, to wit:

In the matter of the petition of tax-payers of the town of Orleans in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same, or the proceeds thereof, in the stock of the Clayton & Theresa Railroad Company.

JEFFERSON COUNTY, *ss:*

The undersigned, George H. Strough, Samuel W. Gates, and Simon Folts, being severally duly sworn, doth each for himself make

145 oath and swear that he will faithfully discharge all the duties of the office of commissioner in and for the town of Orleans in the county of Jefferson, N. Y., to create and issue the bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company, and to do all other acts and things provided for and made incumbent on him as such commissioner by chapter 907 of the laws of 1869, of the State of New York, and the various acts amendatory thereof, to which office he has been appointed, according to the best of his ability.

GEO. H. STROUGH,
S. W. GATES.
SIMON FOLTS.

Subscribed and sworn before me this 25th day of July, 1871.
EDGAR W. BEDELL, *J. P.*

Filed July 27, 1871.

In the matter of the petition of tax-payers of the town of Orleans in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same, or the proceeds thereof, in the stock of the Clayton & Theresa Railroad Company.

Whereas, on the 3d day of May, 1871, sundry tax-payers of the town of Orleans, in the county of Jefferson, State of New York, made application to me, A. H. Sawyer, county judge of the said county of Jefferson, by petition verified by one of said petitioners, setting
146 forth that they are a majority of the tax-payers of said town and whose names appear upon the last preceding tax-list or assessment-roll of said town, and do represent a majority of the taxable property in the corporate limits of said town, and that they desire that the said town of Orleans create and issue its bonds to the amount of eighty thousand dollars, and invest the same, or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18, 1869, and the acts amendatory thereto.

And whereas I, the said county judge, did thereupon, on the 12th day of May, 1871, pursuant to statute, duly make an order that a notice be forthwith published in the Watertown Daily Times, the Watertown Reunion, and the Watertown Post, three newspapers published in the city of Watertown in the said county of Jefferson, directed to whom it may concern, and setting forth that on the day therein named, being the 5th day of June, 1871, at 10 o'clock in the forenoon of that day, at the court house in the city of Watertown, in said county, I would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in said petition and as to the amount of taxable property represented by them.

And whereas on the said 5th day of June, 1871, at 10 o'clock of the forenoon of that day, at the court house in the city of Watertown, in said county, being the time and place named in said order and notice, proof by affidavit having been made before me of the due publication of said notice, pursuant to the order aforesaid, sundry of the parties interested in said matter and proceedings and in favor of said applica-
147 tion, appeared in person and by counsel before me, Messrs. Hubbard & Wright appearing as counsel in behalf of the petitioners, and sundry persons contestants and opposed to said application, appeared in person and by Levi H. Brown, esq., and John Lansing,

esq., as their counsel, and I then and there proceeded to take the proof provided for by the statute aforesaid.

The hearing in said matter and proceeding was continued several days, and during said hearing Jeremiah Petrie, another tax-payer of said town of Orleans, appeared in person before me and expressed a desire to join as a petitioner in said petition and did so join therein, and after hearing the proofs and allegations therein of the said parties, petitioners, and contestants in the premises, and taking such proofs touching the allegations contained in such petition as seemed necessary and pertinent, and after hearing the argument of the counsel aforesaid, it appeared satisfactorily to me, said county judge, that the allegations contained in said petition were established and were true, and that the said petitioners and the said Jeremiah Petrie, tax-payer of said town as aforesaid, who appeared before me and expressed a desire to join as petitioner in such petition and did so join therein as aforesaid, do represent a majority of the tax-payers of said town of Orleans as shown by the last preceding tax-list or assessment-roll, being the tax-list or assessment-roll of the year 1870, and do represent a majority of the taxable property upon said list or roll, and that the amount of the said bonds named in said petition does not exceed twenty per cent. of the whole amount of taxable property of said town as shown by said tax-list or assessment-roll.

That said town of Orleans is a municipal corporation and that there has not been a railroad already constructed and in operation in or through said town.

148 Now, therefore, I Azariah H. Sawyer, county judge of the county of Jefferson, do adjudge and determine that said petitioners and the other tax-payer' of said town of Orleans, who did then and there appear before me and express a desire to join as petitioner in said petition, and did so join as aforesaid, whose names appeared upon the last preceding tax list or assessment roll of the said town of Orleans, as shown by the last preceding tax list or assessment roll thereof, being the tax list or assessment roll for the year 1870, and do represent a majority of the taxable property of said town, as shown upon such tax list or assessment roll.

And I order and direct that this adjudication and determination be entered of record in the office of the clerk of Jefferson County.

And I, the said county judge, do further order that George H. Strough, Samuel W. Gates, and Simon Folts, three freeholders, residents and tax-payers within the corporate limits of the said town of Orleans, be and they are appointed commissioners for the said town, with the powers and for the purposes declared and provided in and by chapter 907 of the laws of 1869 of the State of New York, and the various acts amendatory thereof, and that a commission issue to them accordingly.

In witness whereof, I, Azariah H. Sawyer, county judge as aforesaid, have hereunto set my hand this 1st day of July, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

COUNTY OF JEFFERSON:

John Tamblin, of the city of Watertown, county of Jefferson,
149 State of New York, being duly sworn, says that he is foreman in the office of the Watertown Reunion, a weekly newspaper, printed and published in the city of Watertown, county and State aforesaid, and that the notice, of which the annexed is a printed copy,

has been regularly published in said newspaper once in each week for three weeks successively, commencing on the 6th day of July, 1871.

J. M. TAMBLIN.

Sworn before me this 21st day of July, 1871.

W. J. SMITH,
Notary Public.

Filed August 12th, 1872.

150 STATE OF NEW YORK,
County of Jefferson:

George C. Bragdon, of the city of Watertown, county of Jeffer-
151 son, state of New York, being duly sworn, says that he is the publisher of the Watertown Post, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper once in each week for three weeks successively, commencing on the 6th day of July, 1871.

GEORGE C. BRAGDON.

Sworn before me this 31st day of July, 1871.

FRED. EMERSON,
Notary Public.

Filed August 12th, 1871.

152 STATE OF NEW YORK,
Jefferson County, ss:

Chas. R. Skinner, of the city of Watertown, being duly sworn,
153 says that he is one of the publishers of the Watertown Daily Times, a newspaper printed and published in the city of Watertown, Jefferson County, and State of New York, and that a notice, of which the annexed is a printed copy, has been published regularly in said newspaper once a week for at least three successive weeks, commencing on the 3d day of July, 1871.

CHAS. R. SKINNER.

Subscribed and sworn before me, this day of 18 .

JOHN H. NAPIER,
Notary Public.

Filed August 12, 1871.

No. 1.

To Hon A. H. Sawyer, county judge of the county of Jefferson in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county, that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that as appears by the last preceding tax list or assessment roll of the town of Orleans in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax list or assessment roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax
154 payers of said town, whose names appear upon the last preceding tax list and assessment roll as owning or representing the tax-

able property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town as appeared by the said last preceding tax list or assessment roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town as shown by said tax list and assessment roll, and invest the same or the proceeds thereof in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18, 1869, and the acts amendatory thereto. And your petitioners further pray that who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

R. B. Biddlecom.
Robert T. Jerome, or
Truman Jerome, as on assessment roll.
G. H. Marshall.
George W. VanCoughenet.
J. H. Snyder.
Edgar W. Bedell.
Luthar Lamson.
John Delany.
155 Nelson Goodrich.
Thomas Hagan.
James Kilborn.
S. F. Rood.
George Barden.
G. B. Scoville.
R. D. Barden.
Nicholas Wall, } representing Wall
Halsy Ellis, } & Ellis on ass't roll.
Peter Gillick.
Peter Gillick.
Lucinda (her x mark) Petrie.
Aaron Samme.
Joseph Fults.
Roswell Hildreth.
Abram Tallman.
Michael Fults.
E. T. Sargent.
R. C. Smith.
Singer Nast.
W'm H. Coffeen.
Harvey Petrie.
Adam Gray.
N. W. VanCoughenet.
Catherine Booth.
Betsey Turner.
Valda Baxter.
D. W. Beardsley, } on ass't roll
A. B. Beardsley } Berdsley Bro's.
Wayland F. Ford.
Henry L. Krebs.
Benjamin Wood.
G. W. Hawes.
R. M. Turner.
John M. Watter.
Clark B. Bushnell.
Jotham Marshall.
D. J. Dewey.
Lucien Jerome.
Albert Baxter.
John Geissler.
Nicholas Watt.
Halsey Ellis.
William M'Knight.
Michael (his x mark) McCormick.
Michael (his x mark) McCormick, (rep'ng Ellick & McCormick on ass't roll.)
M'l's George Mayer, j'r.
S. D. Priest.
Valentine Hayes.
George Pilyer.
G. F. Timerman.
Edmund Sargent.
Abram Smith.
George Mayer.
Philip Zimmer.
Parley K. Foot.
Byron J. Strough.
Ernen Jeffers.
Charles Walts.
Nelson Walts.

Solomon Kinyen.
M'r's Louisa (her x mark) Craker.
Melvin S. Tanner.
Andrew Balts.
W. W. Sheley, } rep. Sheley &
Waitstill Carter, } Carter on ass't roll.
Laurence Bretsch.
B. B. Marsh.
Alice Walts.
Sarah A. Richardson.
Edward Barton.
Mageret Cole.
Benjamin Post.
Patrick Gillick.
Nathan Noyes.
Cha's A. Petrie.
Ira Sylvester, j'r, not on roll.

156 John Gieyerich.
Philip Eichorn.
Barbara Eichorn.
Lewis E. Reed.
Levi Loucks.
David Gordon.
Sam. Gray.
William Barton.
Jacob Tanner.
Benjamin Garner.
R. M. Smith.
Frederick Snell.
W'm Mahanna.
Hiram Dodge.
John Dorr.
A. P. Balts.
Frederick Balts.
George Dorr.
John S. Barrows.
George D. Greenleaf.
Julia A. Barrows, widow.
W. C. Hill.
Isabel L. Cole.
Byron Carter.
Elizabeth Baltz, widow.
Charles Wilch.
John Turner.
M'r's Ledsmar Ramsdel.
William Fox.
Philany Sargent.
Jacob W. Eichorn.
Geo. A. Strough.
Francis O. Villy.
Jacob Snell.
Henry Hallar.
M'r's Solon Arnold.
John Wright.
Harvey Silley.
Philip Resh.

No. 2.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that, as appears by the last preceding tax-list or assessment roll of the town of Orleans, in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment roll, as owning or representing the whole of the taxable property in the corporation limits of said town, is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said town, whose names appear upon said last preceding tax-list or assessment roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment roll of said town.

157

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town, as shown by said tax-list and assessment roll; and invest the same or the proceeds thereof in stock of the

Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws New York, passed May 18, 1869, and the acts amendatory thereto. And your petitioners further pray that , who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

David A. Aldrich.
H. M. Stevens.
A. E. Dewey.
Alonzo Church.
Joseph Casler.
Robert (his x mark) Delay.
Simeon Smith.
Alfred J. Wooledge.
Elizar Dewey.
Louise Tallman.
Walter Robinson.
Simon Folts.
Samuel Harris.
Sarah V. DuBois,
Elias Getman.

George Dorr.
158 Hollis Gordon.
Peter Mattrau.
C. P. Rood.
T. D. Flansburgh.
Romain Loucks.
Henry Dorr.
John (his x mark) Hunter.
John A. Snell.
Albert Priest.
Michael J. Hughes.
G. F. Baltz.
Stephen Scovill.
George Heyl.
Clarissa Evans.
S. W. Gates.
Geo. W. Jennings.
William Johnson.
Clark W. Sargent.
Jacob A. Klock.
Elijah Klock.

John S. Dubois.
Jeremiah Petrie.
H. M. Stevens.
A. E. Dewey.
J. Bushnell.
Anson Harder.
John Pretsch.
Zenas A. Loucks.
John Kilborn.
Elizer Dewey, } Dewey & Brown
Belcher A. Brown, } on ass't roll.
Lansing Snell
M'r's Wena Hose.
W'm Whaley.
W'm Whaley.
W. S. Daula Wilders.
Jacob C. Getman.
John Foot.
George Bushnell.
Philip Bushnell.
L. D. Simmons.
Nelson Bauter.
Zenas A Loucks.
Ruth Schram.
L. T. Ford.
Volney Barden.
Patrick J. Hughes.
George Bushnell.
A. J. Snell.
Widow Erchbacher.
Jane Fredenburgh.
J. A. Taylor.
George Sowreime.
R. W. Gates.
William Sargent.
S. W. Sargent.
Levi Klock.
L. C. Goodrich.
Samuel Kilborn.

No. 3.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully

show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that as appears by the last preceding tax-list or assessment-roll of the said town of Orleans, in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said town whose names appear upon the said last preceding tax-list or assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

159

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town, as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18th, 1869, and the acts amendatory thereto.

And your petitioners further pray that , who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said acts.

AURELIA M. TARBELL.
E. E. TARBELL.

160

No. 4.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that as appears by the last preceding tax-list or assessment-roll of the town of Orleans in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said town, whose names appear upon the last preceding tax-list and assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

Your petitioners further show that they desire that the said town of

Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town, as shown by said tax-list and assessment-roll; and invest the same, or the proceeds thereof, in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May
161 18, 1869, and the acts amendatory thereto. And your petitioners further pray that ———, who are freeholders, residents, and taxpayers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

William R. Larabee.	Peter Welles.
J. C. Van Epps.	John Priest.
B. F. Sargeant.	Daniel Strough.
Abram Raught.	Mary (her x mark) Sargent.
Alex. Ford.	Gustavus Turner.
Seril Kenyon.	David Faults.
Jeremain Tallman.	Sophia E. Graham.
W. S. Lewis.	Daniel Eddy.
Sarah M. Spaulsbury.	M'r's J. E. Lewis.
Polly Eber.	John Spaulsbury.
H. B. Edwards.	B. O. Edmonds.
William Timerman.	H. F. Timerman, } Represent'g H. F.
Reuben Timerman.	G. C. Timerman, } Timerman & Co.,
Horace Garlock.	G. H. Timerman, } on assessment roll.
A. M. Loucks.	Abram Garlock.
Valentine Brightwiser.	E. Timerman.
Anthony Herbercht.	Elizabeth Hughes.
M'r's Eve Jenkins, [M'r's Jacob Jenkins on the ass't roll.]	Benjamin Shimel.
	Solomon Pickard.
Conrad (his x mark) Shimel.	Merrick Pickard.
Jeremiah Timerman.	M'r's Mary (her x mark) Barlow.
Jason D. Timerman.	John Petrie.
J. N. Beardsley.	George Eckert.
Adam Fort.	Mariel Simonet.
M'r's A. Hughes.	Margaret Gabbles.
Joseph Winom.	Warren R. Smith.
Alfred Wooledge.	H. F. Timerman.

162 No. 5.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that, as appears by the last preceding tax-list or assessment-roll of the town of Orleans in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto,

are and do constitute a majority of the tax-payers of said town whose names appear upon said last preceding tax-list or assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18,
163 1869, and the acts amendatory thereto. And your petitioners further pray that , who are freeholders, residents, and taxpayers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

Walter Loucks.
W'm W. Larabee.
E. J. Wright.
W. T. Ford.
Charles S. Bicklecom.
Homar W. Beardsley.
Daniel R. Larabee.
E. C. Cummings.
Lansing Larabee.

No. 6.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that, as appears by the last preceding tax-list or assessment-roll of the said town of Orleans, in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said
164 town whose names appear upon the said last preceding tax-list or assessment-roll as owning or representing the taxable property in the limits of said corporation or town, and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18th, 1869, and the acts amendatory thereto.

And your petitioners further pray that , who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing, in the name of said town, to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said acts.

Nathan Holloway.
George W. Gould.
Joshua Wiley.
Geo. Sheley.
Ester (her x mark) Mercy.
W. C. Garner.
Samuel Patterson.
James Spaulsbury.
T. W. Dennis.
Pulman Gardner.
165 Levi Garlock.
Peter Proper.
W. C. Smith.
Nathan Holloway.
Alphonso Case.
Levi (his x mark) Prime.
W'm Nunn.
H. P. Moore.
W. M. Nunn.
John Keech.
John Harden.
Asa (his x mark) Bowen.
Benjamin Calhoun.
Otis N. Britton.
Mrs. E. C. Van Dewalker.
William Joles.
Samuel J. Gibbens.
Matthew Hannahs.
George Baltz.
W'm M. Wiley.
F. Paterson.
Green Packer.
Jonah Patterson.
Valentine Workman.
A. J. Spaulsbury.
A. W. Dennis.
O. S. Burgen.
Daniel C. Hawn.
E. M. Robbins.
Robert Smith.
John Keech.
Henry P. McCanty.
Richard Mahar.
Robert Tom.
Edward Barton.
Eldridge G. Robbins.
John Moone.
Jacob H. Post.
Henry Lfiur.
J. A. Wagoner.
S. D. Reed.
John H. Bauter.
S. F. Fuller.
Emiline Hoover.
Ch. Schollenberg.

No. 7.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that, as appears by the last preceding tax-list or assessment-roll of the town of Orleans in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the sub-
166 scribers hereto, are and do constitute a majority of the tax-payers of said town whose names appear upon the last preceding tax-list and assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do

own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment-roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town as shown by said tax-list and assessment-roll, and invest the same or the proceeds thereof in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18, 1869, and the acts amendatory thereto.

And your petitioners further pray that ————, who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing, in the name of said town, to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

T. R. Stackhouse.	William Rodgers.
Melvin Burton.	Edgar Collins.
Thaddeus Brooks.	Hamilton Brooks.
Irvin Hunter.	W'm Sherman.
John Watterson.	Harrison Cole.

167 No. 8.

To Hon. A. H. Sawyer, county judge of the county of Jefferson, in the State of New York:

Your petitioners, whose names are hereto subscribed, respectfully show to the honorable county judge of said county that the town of Orleans is a municipal corporation in the county of Jefferson and State of New York; that, as appears by the last preceding tax-list or assessment-roll of the town of Orleans, in the said county, the assessed valuation of the property of said town is $498,470; that the number of names appearing on said tax-list or assessment-roll as owning or representing the whole of the taxable property in the corporation limits of said town is four hundred and ninety-five; that your petitioners, the subscribers hereto, are and do constitute a majority of the tax-payers of said town whose names appear upon said last preceding tax-list or assessment-roll as owning or representing the taxable property in the limits of said corporation or town; and that your petitioners do own and represent a majority of said taxable property in the corporate limits of said town, as appeared by the said last preceding tax-list or assessment roll of said town.

Your petitioners further show that they desire that the said town of Orleans shall create and issue its bonds to the amount of $80,000 (eighty thousand dollars), not exceeding twenty per cent. of the amount of taxable property of said town, as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907 of the laws of New York, passed May 18, 1869, and the acts amendatory thereto.

168 And your petitioners further pray that ————, who are freeholders, residents, and tax-payers within the corporate limits of said town, may be appointed and commissioned by your honor for the

purpose of making and executing the bonds of said town to the amount and for the purpose aforesaid, and for the purpose of subscribing in the name of said town to the stock of said railroad company to an amount equal to such bonds, and for the other purpose mentioned and contemplated in said act.

William Rees. G. H. Dorr.
David S. Rees. Halsey A. Ellis.

Before Hon. A. H. Sawyer, county judge of Jefferson County.

In the matter of the petition of Russel B. Biddlecom and others, for the appointment of commissioners for the town of Orleans to issue the bonds of said town, in said county, and subscribe for stock of the Clayton & Theresa Railroad Company.

JEFFERSON COUNTY, *ss:*

Russel B. Biddlecom, being duly sworn, saith that he is one of the petitioners hereto annexed; that he has read the said petition and knows the contents of the same, and that the same is true to his
169 knowledge, except as the matters stated on information and belief, and as to those he believes the said petition to be true.

RUSSEL B. BIDDLECOM.

Sworn to before me this 3d day of May, 1871.

A. H. SAWYER,
County Judge.

Before Hon. A. H. Sawyer, county judge of Jefferson County.

In the matter of the petition of Russel B. Biddlecom and others, for the appointment of commissioners for the town of Orleans to issue the bonds of said town and subscribe for stock of the Clayton and Theresa Railroad Company.

Application having been made to me by the petition of Russel B. Biddlecom and others, tax-payers of the town of Orleans, in said county, verified by one of the petitioners; which petition purports to be made by a majority of the tax-payers of said town, whose names appear upon the last preceding assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of said town, and sets forth that they are such majority of tax-payers, and represent such majority of taxable property, and that they desire said town shall create and issue its bonds to the amount of eighty thousand dollars, but not exceeding twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll, and
170 invest the same, or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, in this State:

Now, on motion of Wayland F. Ford, counsel for the said petitioners, it is ordered that a notice shall be forthwith published in the Watertown Daily Times, Reunion, and Watertown Post, three newspapers published in the city of Watertown, in the said county of Jefferson, directed to whom it may concern, setting forth that, on the 5th day of June, 1871, at 10 o'clock in the forenoon of that day, at the court-house in the city of Watertown, in said county, I will proceed to take the proof of the facts set forth in said petition as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by them.

Dated Watertown, May 12, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

To whom it may concern:

Application having been made to me by petition by Russel B. Biddlecom and others, claiming to be a majority of tax-payers of the town of Orleans, and representing a majority of the taxable property of said town, as appearing by the last assessment-roll thereof, for the appointment of three commissioners to subscribe, in the name of the town of Orleans, eighty thousand dollars to the capital stock of the Clayton & Theresa Railroad Company, and issue bonds of the said town to the like amount in payment of said stock:

Notice is hereby given that, on the 5th day of June, A. D. 1871,
171 at ten o'clock in the forenoon of that day, at the court-house in the city of Watertown, I will proceed to take proof of the facts set forth in the said petition as to the number of tax-payers joining in the same, and as to the amount of taxable property represented by them.

Dated Watertown, May 12, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

To whom it may concern:

Application having been made to me by petition by Russell B. Biddlecom and others, claiming to be a majority of tax-payers of the town of Orleans, and representing a majority of the taxable property of said town, as appearing by the last assessment-roll thereof, for the appointment of three commissioners to subscribe, in the name of the town of Orleans, eighty thousand dollars to the capital stock of the Clayton and Theresa Railroad Company, and issue bonds of the said town to the like amount in payment of said stock:

Notice is hereby given that, on the 5th day of June, A. D. 1871, at ten o'clock in the forenoon of that day, at the court-house, in the city of Watertown, I will proceed to take proof of the facts set forth in the said petition, as to the number of tax-payers joining in the same, and as to the amount of taxable property represented by them.

Dated Watertown, May 12, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

172 STATE OF NEW YORK,
County of Jefferson, ss:

Frank S. Reynolds, of the city of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is foreman in the office of the Watertown Post, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper once in each week for three weeks successively, commencing on the 18th day of May, 1871.

FRANK S. REYNOLDS.

Sworn before me this 5th day of June, 1871.

THO'S F. KEARNS,
Notary Public.

173 STATE OF NEW YORK,
Jefferson County, ss:

John M. Tamblin, of the village of Watertown, county of Jefferson, State of New York, being duly sworn, says that he is foreman of the

office of the Watertown Re-Union, a weekly newspaper printed and published in the city of Watertown, county and State aforesaid, and that the notice of which the annexed is a printed copy has been regularly published in said newspaper once in each week for two weeks consecutively, commencing on the 18th day of May, 1871.

J. M. TAMBLIN.

Sworn before me this 5th day of June, 1871.

THO'S F. KEARNS,
Notary Public.

174 STATE OF NEW YORK,
Jefferson County, ss:

L. Ingalls, of the city of Watertown, being duly sworn, says that he is one of the publishers of the Watertown Daily Times, a newspaper printed and published in the city of Watertown, Jefferson County, and State of New York, and that a notice of which the annexed is a printed copy has been published regularly in said newspaper once a week for at least 4 successive weeks, commencing on the 12th day of May, 1871.

L. INGALLS.

Subscribed and sworn before me this 5th day of June, 1871.

THO'S F. KEARNS,
Notary Public.

175 In the matter of the petition of Russel B. Bidblecom and others for the appointment of commissioners to subscribe, in the name of the town of Orleans, to the stock of the Clayton and Theresa Railroad Company.

The whole amount of taxable property appearing on the assessment roll of the town of Orleans, for the year of 1870, is $498,420, and the whole number of names of tax-payers appearing upon said roll is 471, including the name of Jeremiah Petrie, who appeared before me upon the hearing and desired to join in the petition, and estimating the $4,200 assessed to him, the petitioners number 283 of the tax-payers and represent $285,960 of the taxable property of the town of Orleans appearing upon the assessment roll of said town for 1870.

Upon the hearing various questions were raised by the contestants as to the validity of the assessment-roll of the town of Orleans for 1870, the constitutionality of the acts of the legislature under which the proceedings were instituted, the competency of proof offered by the petitioners, etc., but as similar questions had risen and been recently decided by me in the matter of the petition of tax-payers of Clayton, these various questions were, in conformity with the decision in that case, disposed of upon the hearing, and the objections of the contestants overruled.

This case, however, presents two questions which did not arise in the matter of the petition of tax-payers of Clayton.

It is claimed by the contestants here that a number of the
176 petitioners signed the petition in ignorance of its contents or character, being misled by representations made to them at the time of signing by persons engaged in procuring signatures to the petition, and supposing that the paper signed by them was a remonstrance against a railroad, or expressing the choice of the people for a particular route, and not a petition, so called, for bonding the town.

Numerous tax-payers of the town, whose names appear upon the petition, have appeared before me and testified to that effect, and that they would not have signed such a petition had they had any knowledge of its true character, and ask to have their names stricken from the petition.

Wherever it clearly appears from the evidence that persons signed the petition in ignorance of its character, supposing it to be a paper of an entirely different nature, I entertain no doubt that the names of such persons should not be counted as petitioners.

Evidence was given on the part of the petitioners showing that the contents of the petition were fully made known to each of these petitioners before signing, and I have no reason to think that any attempt was made, by any one engaged in procuring signatures to the potition, to mislead any petitioners as to the true nature or character of the petition.

I have reason to believe, however, that the following persons, viz, Benjamin Shimel, Eve Jenking, Elizabeth Hughes, and Valentine Brightweiser, either thro' an imperfect knowledge of the English language or from some other cause, failed to comprehend the statement made to them by the persons who procured their signatures, and signed the petition in ignorance of its true character, and that they would not have signed such a petition had they understood its pur-
177 port. The names of these persons should not be counted, therefore, as petitioners in this matter.

Several other persons appeared before me and testified that they signed the petition in ignorance of its contents or character, and that they would not have signed had they had such knowledge. But from the evidence of these persons themselves, taken in connection with their appearance upon the stand, and all the circumstances of the case, I cannot regard such claim on their part as well founded.

It is also claimed by the contestants that numerous petitioners signed the petition with full knowledge of its contents and character, but were induced to do so by representation and statements made by persons engaged in procuring signatures to the petition, to the effect that a sufficient number of signatures had already been obtained to the petition, or a sufficient number certainly would be, to bond the town, or that unless a majority of the names of tax-payers were procured to this petition, a railroad would be built through the town upon another route, and various statements of like character, all of which were untrue in fact.

It being conceded that these persons were fully acquainted with the nature and contents of the petition at the time they signed the same, they must be regarded as petitioners in the matter.

And I have no power in a proceeding of this character to enter into an investigation of statements or representations made to induce such persons to become petitioners, or as to the truth or falsity of such representations.

Upon the argument counsel for the contestants asked to have
178 stricken from the petition the names of such petitioners as appeared upon the hearing and made such request.

The act of the legislature under which these proceedings were instituted in express terms permits any tax-payers of the town to appear before the judge upon the hearing, and then and there join in the petition, but no provision is made for the withdrawal of any petitioner, and it seems to me there can be no question that such provision would have been made had it been the intention of the legislature to permit it.

The question is very fully discussed in the opinion of Judge Prindle, in the matter of tax payers of the town of Greene (38 How. P. R., 515,) and I see no reason to dissent from his conclusions.

After striking from the petition the four names hereinbefore mentioned, and deducting the amount of taxable property represented by them, $7,755, there *there* still remains upon the petition the names of 279 tax-payers, representing $278,215 of the taxable property of the town of Orleans appearing upon the assessment-roll of 1870.

I therefore find and decide that the petitioners in this matter represent a majority of the tax-payers of the town of Orleans, as shown by the last preceding assessment-roll of said town, and that they represent a majority of the taxable property upon said roll.

And I appoint George H. Strough, Samuel W. Gates, and Simon Folts, freeholders, residents and tax-payers within the corporate limits of said town of Orleans, to be commissioners to subscribe, in the name of said town, to the capital stock of the Clayton and Theresa Railroad Company, and to issue the bonds of said town therefor.

June 30th, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

179 In the matter of the petition of tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same, or the proceeds thereof, in the stock of the Clayton & Theresa Railroad Company.

I, Azariah H. Sawyer, county judge of the county of Jefferson, by virtue of the authority in me vested by the laws of the State of New York, do hereby appoint and commission George H. Strough, Samuel W. Gates, and Simon Folts, three freeholders, and residents and tax-payers within the corporate limits of the town of Orleans, in the county of Jefferson, State of New York, commissioners in and for the said town of Orleans, to create and issue the bonds of said town, to the amount of eighty thousand dollars ($80,000), and to invest the same, or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, and to do all other acts and things provided for, and as are incumbent on them as such commissioners, by chapter 907 of the laws of 1869, of the State of New York, and the various acts amendatory thereof.

In witness whereof, I, Azariah H. Sawyer, county judge as aforesaid, have hereunto set my hand the first day of July, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

180 In the matter of the petition of tax-payers of the town of Orleans, in the county of Jefferson, to create and issue bonds of said town to the amount of $80,000, and invest the same, or the proceeds thereof, in the stock of the Clayton & Theresa Railroad Company.

Whereas on the 3d day of May, 1871, sundry-tax payers of the town of Orleans, in the county of Jefferson, State of New York, made application to me, A. H. Sawyer, county judge of the said county of Jefferson, by petition, verified by one of said petitioners, setting forth that they are a majority of the tax-payers of said town, and whose names appear upon the last preceding tax-list or assessment-roll of said town, and do represent a majority of the taxable property in the corporate

limits of said town, and that they desire that the said town of Orleans create and issue its bonds to the amount of eighty thousand dollars, and invest the same, or the proceeds thereof, in the stock of the Clayton and Theresa Railroad Company, located in this State, in pursuance of the provisions of chapter 907, of the laws of New York, passed May 18th, 1869, and the acts amendatory thereto.

And whereas I, the said county judge, did thereupon, on the 12th day of May, 1871, pursuant to statute, duly make an order that a notice be forthwith published in the Watertown Daily Times, the Watertown Reunion, and the Watertown Post, three newspapers, published in the city of Watertown, in the said county of Jefferson, directed "To whom it may concern," and setting forth that on the day therein named, being the 5th day of June, 1871, at 10 o'clock in the forenoon of that day, at
181 the court-house, in the city of Watertown, in said county, I would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by them.

And whereas, on the said 5th day of June, 1871, at 10 o'clock in the forenoon of that day, at the court-house in the city of Watertown, in said county, being the time and place named in said order and notice, proof by affidavit having been made before me of the due publication of said notice, pursuant to the order aforesaid, sundry of the parties interested in said matter and proceedings, and in favor of said application, appeared in person and by counsel before me, Mess'rs Hubbard & Wright appearing as counsel in behalf of the petitioners, and sundry persons contestants and opposed to said application, appeared in person, and by Levi H. Brown, esq., and John Lansing, esq., as their counsel, and I then and there proceeded to take the proofs provided for by the statute aforesaid.

The hearing of the matter and proceeding was continued several days, and during said hearing Jeremiah Petrie, another tax-payer of said town of Orleans, appeared in person before me and expressed a desire to join as a petitioner in said petition, and did so join therein, and after hearing the proofs and allegations therein of the said parties, petitioners and contestants in the premises, and taking such proofs touching the allegations contained in such petition as seemed necessary and pertinent, and after hearing the argument of the counsel aforesaid, it appeared satisfactorily to me, the said county judge, that the allegations contained in the said petition were established and were true, and that the said petitioners and the said Jeremiah Petrie, tax-payers of said town, as aforesaid, who appeared before me and expressed a desire to join as
182 petitioner in such petition and did so join therein as aforesaid, do represent a majority of the tax-payers of said town of Orleans, as shown by the last preceding tax-list or assessment-roll, being the tax-list or assessment-roll of the year 1870, and do represent a majority of the taxable property upon said list or roll, and that the amount of said bonds named in said petition does not exceed 20 per cent. of the whole amount of taxable property of said town, as shown by said tax-list or assessment-roll.

That the said town of Orleans is a municipal corporation, and that there has not been a railroad already constructed and in operation in or through said town.

Now, therefore, I, Azariah H. Sawyer, county judge of the county of Jefferson, do adjudge and determine that said petitioners and other tax-payer of the said town of Orleans, who did then and there appear before me and express a desire to join as petitioner in said petition, and did so

join as aforesaid, whose names appeared on the last preceding tax-list or assessment-roll of said town, do represent a majority of the tax-payers of the said town of Orleans, as shown by the last preceding tax list or assessment-roll thereof, being the tax-list or assessment-roll for the year 1870, and do represent a majority of the taxable property of said town, as shown upon such tax-list or assessment-roll.

And I order and direct that this adjudication and determination be entered of record in the office of the clerk of Jefferson County.

And I, the said county judge, do further order that George H. Strough, Samuel W. Gates, and Simon Folts, three freeholders, residents and tax-payers within the corporate limits of the said town of Orleans, be, and they are appointed commissioners for the said town, with the
183 powers and for the purposes declared and provided in and by chapter 907 of the laws of 1869 of the State of New York, and the various acts amendatory thereof, and that a commission issue to them accordingly.

In witness whereof, I, Azariah H. Sawyer, county judge as aforesaid, have hereunto set my hand, this first day of July, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

Judgement signed July 3d, 1871, at 5 p. m.

GEO. COLE, *Deputy Clerk.*

Filed July 3d, 1871, at 5 p. m.

And I do hereby certify and return, that the foregoing is a true and correct copy of a roll of proceedings on file in this office, and of the whole of said original, and of all other matters or things pertaining to the said matter, or the prosecution thereof, which are now on file in my said office or recorded therein.

All of which I do hereby certify and return, as by the said writ I am commanded.

In testimony whereof I have hereunto set my hand and official seal, this 22d day of December, 1871.

[L. S.] JACOB STEARS, JR. *Clerk,*
By GEO. COLE, *Dep. Clk.*

The people of the State of New York to Azariah H. Sawyer, county judge of Jefferson County, and Jacob Stears, jr., county clerk of the county of Jefferson, greeting:

Whereas, we have been informed by the complaint of William
184 B. Irwin, Cornelius Bort, Albion A. Hughes, residents and tax-payers of the town of Orleans, in the county of Jefferson, that certain proceedings are claimed to have been had before you, the said Azariah H. Sawyer, county judge as aforesaid, under and by virtue of the provisions of chapter 907 of the laws of 1869, and the acts supplemental thereto and amendatory thereof, in the matter of the petition of the taxpayers of the said town of Orleans to create and issue bonds of said town to the amount of $80,000, and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company, wherein a petition was presented to you under provisions of said law, and an order was made by you thereupon, directing the notice to be published of the presentation of such petition, as provided in and by said act, which notice was duly published, and on the day mentioned in said notice the petitioners appeared before you by counsel, and the said relators hereinbefore mentioned also appeared before you by counsel, and

witnesses were sworn and evidence given before you, and such action was thereupon taken by you in the premises that, on the 30th day of June, 1871, you made your decision in said matter, whereby you granted the prayer of said petition, and appointed three commissioners for said town under the provisions of said act, which said decision was duly filed in the office of the clerk of the county of Jefferson aforesaid, on the 3d day of July, 1871, and we being willing, for certain reasons, to be certified of the said proceedings, all testimony which was taken before you on such proceedings and offers of testimony, objections and rulings therein, and all affidavits, paper-writings, exhibits, and orders made by you in such proceedings, and all things appertaining thereto, which are not contained in the roll of proceedings in said matter filed with the
185 clerk of the county of Jefferson as aforesaid, do command and strictly enjoin that you, the said Azariah H. Sawyer, do certify the same and all thereof with all things appertaining thereto unto our justices of our supreme court, at the next general term of the said supreme court, to be held in the fourth judicial department of the State of New York, wherever the same may be held, under your seal as fully and amply as the same remain before you; and you, the said Jacob Stears, jr., county clerk as aforesaid, we do command and strictly enjoin that you certify under your official seal as fully and amply as the same may remain before you and in your office, the roll of proceedings in the said matter filed in your said office, and all other matters or things pertaining to the said matter or the prosecution thereof, which are now on file in your said office, or recorded therein, that our said justices may cause to be done further thereupon what of right and according to law ought to be done, and have you then there this writ.

Witness, Hon. Joseph Mullin, presiding justice of our said court for the 4th judicial department, at the court-house in the city of Watertown, in the county of Jefferson, the 12th day of October, 1871.

JACOB STEARS, J'R, *Clerk.*

LANSING & SHERMAN, *Attorneys.*

The return to the within and foregoing writ appears by the schedules hereunto annexed.

Dated Watertown, Dec. 27, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

Recorded Oct. 14, 1871.

186 *The answer or return of Azariah H. Sawyer, county judge of Jefferson County, to the writ of certiorari hereto annexed.*

By virtue of and in obedience to the writ of certiorari hereto annexed, and to me directed, I do hereby certify and return to the justices of the supreme court, that on the 3d day of May, 1871, the petition contained in the judgment roll now on file in the office of the clerk of Jefferson County, and purporting to be signed by a majority of the tax-payers of the town of Orleans, was presented to me. That thereafter, and on the 12th day of May, 1871, I made an order, which is contained in said judgment roll, directing that notice be published in three newspapers, published in the city of Watertown, directed "To whom it may concern," and setting forth that on the 5th day of June, 1871, at 10 a. m., at the court-house in Watertown, I would proceed to take proofs of the facts set forth in said petition. In pursuance of said order a notice, a copy

of which is contained in said judgment roll, was published in said three newspapers; and at the time and place appointed, to wit, on the 5th day of June, 1871, at the court-house in the city of Watertown, several of the petitioners, with counsel, appeared before me, and also several tax-payers of said town of Orleans appeared, with counsel, in opposition to the application of the petitioners; and thereupon evidence was given upon the part of the petitioners and contestants, decisions made and exceptions taken, as appears by the schedules hereto annexed.

Thereafter, and on the 30th day of June, 1871, I decided that the persons whose names were signed to the said petition, represented a majority of the tax-payers of the said town of Orleans, as shown by
187 the last preceding assessment roll of said town, and that they represented a majority of the taxable property upon said roll. And I thereupon appointed and commissioned George H. Strough, Samuel W. Gates, and Simon Folts, freeholders, residents and tax-payers of said town of Orleans, as commissioners, to subscribe in the name of said town to the capital stock of the Clayton and Theresa Railroad Company, and to issue the bonds of said town therefor.

The said decision and commission are contained in and form a part of said judgment-roll.

All of which I do hereby certify and return as within I am commanded.

In testimony whereof I have hereunto set my hand this 27th day of December, 1871.

A. H. SAWYER,
County Judge of Jefferson County.

In the matter of the petition of Russell B. Biddlecom and others for the appointment of commissioners to subscribe, in the name of the town of Orleans, to the stock of the Clayton and Theresa Railroad Co.

JUNE 5, 1871—11 a. m.

Hubbard & Wright, W. F. Porter, and W. F. Ford for petitioners.

Levi H. Brown and John Lansing for contestants.

Contestants object to petition:

1st. Does not contain a sufficient statement as required by the
188 amended act passed May 12, 1871, in that it does not show that the petitioners are taxed or assessed for or represent a majority of the taxable property of such town.

2d. The verification is insufficient, for the reason that it does not appear that R. B. Biddlecom, the person making the same, is one of the petitioners.

3d. Verification insufficient, for that it states that he believes the petition to be true, except as to those matters stated on information and belief; should state that it is true.

4th. Verification insufficient, in that it does not state that the petitioners are a majority of the tax-payers and are taxed or assessed for or represent a majority of the taxable property of town.

Objections overruled; exception.

Contestants object to the order requiring notice to be published:

1st. It is insufficient, in that it does not state that a petition properly verified, showing that the petitioners are taxed, assessed for, or represent a majority of the taxable property of said town.

Objection overruled; ex.

Petitioners offer in evidence proof of the publication of the notice required in the three newspapers mentioned in the order.

Cornelius Bort, William B. Irwin, and Albion A. Hughes, tax-payers of the town of Orleans, on behalf of themselves and other tax-payers of said town, deny the allegations of the petition.

Petitioners offer in evidence original assessment-roll of town of Orleans for 1870, with collector's warrant annexed, amount tax extended.

189 Objected to, that the affidavit or certificate annexed is not in conformity to the statute, and therefore the roll is void. Assessors testify that they have estimated the personal property according to their best information and belief and to do justice to our town.

2d. The certificate is not sworn to before a justice of the peace of the town.

Objections overruled; ex.

Roll received in evidence, marked "B."

The certificate also omits the words "full and true value," required by statute.

Overruled; ex.

RUSSELL B. BIDDLECOM sworn for petitioners.

Reside in the town of Orleans; procured all the signatures to petitions No. 1, No. 2, No. 3, and the signature of H. F. Timmerman on No. 4; all the names were signed by the person represented or by their authority, in my presence and in the presence of the petitioner except David A. Aldrich, first name on petition No. 2, and Aurelia M. Tarbell and E. E. Tarbell on petition No. 3, whose handwriting I know. I know the handwriting of each of these three persons; have seen them write and have letters from them, and these signatures are in their genuine handwriting. The following names were signed by me by the authority, direction, and in the presence of the respective persons on petition No. 1: John Delany, Harvey Sibley, Mrs. George Mayer, j'r, Frederick Snell, Solomon Kinyon, Mrs. Solon Arnold; also, the following on No. 2: Simeon Smith, Jane Fredenbergh, Levi Klock, Elijah Klock, Joseph Casler. The following petitioners' names were written by me at their request, and they made their mark thereto, in

190 my presence, and were persons who could not write: Michael McCormick on No. 1 (his name appears twice on petition—1st, individually, and 2d, as one of the firm of Gillick & McCormick); Lucinda Petrie (No. 1), Mrs. Louisa Cranker (No. 1), Robert Delay (on No. 2), John Hunter (No. 2). The following names were signed by the direction of the petitioner in my presence, by other persons, and also in presence of petitioner: William Mahanna (*Mo.* 1), signed by his son, Cornelius Mahanna; Patrick Gillick (No. 1), signed by his son, James Gillick; H. F. Timmerman (No. 4), signed by H. B. Edmonds.

Cross-examination:

Not every one of the petitioners read the petition themselves; but few of them did; a statement of the contents of the petition was generally made to those who signed. At La Fargeville, where the persons were familiar with the matter, it was simply stated that it was the petition for bonding. I read the petition over in full to Philip Zimmer; don't remember the names of any others. I stated the substance of the petition, read it over, or showed it to every person whom it was hard to procure to sign it. Petitioners mainly signed in February, March, and April; possibly some first of May. David A. Aldrich was not in the

town when he signed petition; lives in Ohio; he moved from Orleans to Ohio last winter or spring, and before signing petition.

Q. State whether before leaving town and moving to Ohio, he sold his property, and to whom.

(Objected to, as immaterial. Objection sustained. Exception.)

191 At the time of signing the petition, E. E. Tarbell and Aurelia M. Tarbell lived at or near Corydon, Wayne County, Iowa; E. E. Tarbell moved there two years ago, and Aurelia last March; petition was sent to them by mail, and was returned to me signed by them.

Contestants offer to show that the petitioners Aldrich and the two Tarbells just spoken of, appearing on the so-called assessment roll as assessed for and representing $1,475 of the property assessed on the roll, had, prior to the 15th of March last, sold and conveyed away such property, and had removed from this State.

(Objected to as immaterial and incompetent. Objection sustained. Exception.)

At the time of signing this petition no other paper was signed by the petitioners, relating to the location of a road or otherwise.

DAVID W'M BEARDSLEY sworn.

Reside in Orleans; procured signatures to petition No. 4, with the exception of M'r's Mary Barlow and H. F. Timmerman. M'r's Barlow's name was written by Henry D. Edmond, and she made her mark thereto in his and my presence.

Q. Did they all sign their own names except the two above mentioned?

A. They did, except the following: Mary Sargent was signed by her son, B. F. Sargent, by her direction, in her presence and mine, and she made her mark. Alexander Ford's name was signed by his son, by his direction, in his presence and mine. Conrad Shimmel's name was written by me, by his direction, and in his presence, and he made his mark thereto. M'r's A. Hughes' name was written by her son Michael, by her direction, in her presence and mine.

192 (Contestants insist that there should be a subscribing witness to the signatures of those persons who made their mark, and proof of the signature must be made by such subscribing witnesss only. Overruled. Exception.)

Q. State the name of any petitioner on No. 4 who, in your presence, read the whole petition.

A. I remember but two, Henry B. Edmond and Abram Rought.

Q. State the name of any petitioner on No. 4 to whom you, or any one in your presence, read the whole petition.

A. It was read to A. M. Loucks, by M'r Edmond; also to Anthony Herbracht, by M'r Edmond; think it was read to Eve Jenkins by same; remember no others. Edmond was with me when most of the names on this petition were procured; one or the other stated to the petitioners the substance of the petition. I remember the substance of what was said to each person, but not the precise language to any one; no other paper was presented to either of the petitioners relating to the railroad, its location, or the bonding of the town. I know of none of the petitioners who could not read. Petition was signed between the 11th of February and 1st of May. All the petitioners on No. 4 lived in Orleans when petition was signed, except Peter Nellis, who lives in Pamelia; he signed the petition at my store in La Fargeville. With the

exception of Nellis, I am personally acquainted with all the petitioners on No. 4.

(Conceded that Peter W. Nellis, who lives in Orleans, has not signed the petition.)

The names on petition No. 5 are voters but not tax-payers, and their names are not on assessment-rolls—(not included in count).

193 NATHAN HOLLOWAY sworn.

Reside in Orleans, and procured all the signatures on petition No. 6; knew all the persons; each signed his own name except the following: Esther Mercy's name was written by M'r's Charles Gardner, by her direction, in her presence and mine. Levi Garlock was signed by his wife, by his direction, in his and my presence. Robert Smith signed by his wife, by his direction, in his and my presence. Levi Prime was written by me, by Prime's direction, in his presence. John Hardon written by Jacob H. Post, by his direction, and in his and my presence. Henry LaFlur, or Henry L. Flur, written by Jacob H. Post, by his direction, and in his and my presence. Asa Bowen was written by myself, by his direction and in his presence, and he made his mark thereto in my presence. Benjamin Calhoun was written by me, by his direction, and in his presence, and he made his mark thereto in my presence. M'r's E. C. Vandewalker was written by her husband, by her direction and in her and my presence. All the signatures on the petition were made in my presence. I have compared all the names on the petition No. 6 with the assessment roll of 1870, and their names are on such roll. I made the assessment myself, as assessor, and I know the persons personally.

Cross-examination:

All resided in Orleans except John H. Bauter, who, at the time of signing, lived near Natural Bridge, in Wilna; moved there last March, and now lives there; he worked Stephen Fisher's farm last year; Bauter is assessed for real and personal property; still owns the real estate, 3 acres, $25; he signed the petition about the 1st of April. I could not say that any one of the petitioners read the petition through. I
194 handed it to several persons; Green Tucker, Franklin Patterson, Mathew Hannahes, think D'r C. Haws, Joseph Patterson, George W. Gould, W'm M. Wiley. There may have been others, but I don't remember; think I read the petition through to Benjamin Calhoun and Peter Praper. There were others, but I don't remember their names. I read it to George Balts, Valentine Workman; think H. P. Moore took the petition and read it; think I read it to Spencer D. Reed, Samuel Gibbons. Ansel Pierce, on the assessment-roll, is a man, and represents, as I suppose, the former husband of Esther Mercy; she has married, as she told me, a man named Mercy.

(Esther Mercy, representing $60, withdrawn.)

All the persons on petition No. 6 were in my assessment district.

Q. State whether you omitted from the certificate on assessment roll the words "full and true value" because you had not estimated according to its full and true value; and did you add to the certificate the words "in justice to our town" because you had not set down all the personal property?

(Objected to as incompetent and immaterial. Objection sustained. Exception.)

WILLIAM ROGERS sworn.

Reside in Orleans, and procured all the signatures to petition No. 7; knew all the persons who signed that petition; all but one signed the petition in my presence, except John Waterson, whose name I signed by his direction and in his presence. There are ten names on the petition, six of whom are not on the assessment roll. T. R. Stackhouse, William Rogers, Hamton Brooks, and John Waterson are on the roll. Waterson lives on Wells Island.

195 ALDIN F. BARKER sworn.

Procured all the signatures to petition No. 8; they were signed by the persons themselves in my presence, and I knew the men.

Cross-examination:

All resided in Clayton at the time of signing the petition, and have for several years, and signatures were written at my store.

RUSSEL A. BIDDLECOM sworn.

With the exception of three years in Watertown, 1858, '59, and '60, I have resided in the town of Orleans 36 years. For the past 27 years I have held some official position in the town nearly all the time; supervisor 5 years. I have compared the names on the petition with the assessment-roll for 1870 of that town. I have counted the names on the assessment-roll assessed for real and personal property, and also the names on the petition that appear on the roll thus assessed. I have footed the assessment-roll; the amount of real and personal property assessed is $498,420. The number of names on the roll assessed for real and personal property is 471. The number of names on petition appearing on the roll is 283, and they represented $281,820 (including $60 assessed to Ansel Pierce) of the property on the assessment-roll. I have a schedule of such, marked "C." It contains two columns: one, headed "assessment-roll," shows the name as it appears on the assessment-roll for 1870; the other columns, headed "petition," shows the name as it appears on the petition. The names in the column headed "petition," on the 1st, 2d, and 3d pages of Schedule C, including G. H. Dorr, are the same persons whose names appear opposite in the column headed
196 "assessment-roll." The names in the column headed "petition," on the 5th page of schedule, commencing with W'm R. Larabee and ending with Warren R. Smith, are the same persons whose names appear opposite in the column headed "assessment-roll." I know the four persons appearing on petition No. 8 are the same persons appearing on assessment-roll.

Cross-examination:

Jerome Bushnell resided in Watertown for 3 or 4 years; H. M. Stevens resides in Watertown; came here March 1st, 1870; B. W. Bedell occupied the property assessed to Jerome Bushnell. My estimate includes property assessed to Bushnell and Stevens, Aldrich, the two Tarbels, and the persons whose names appear on petition No. 8; also estimate to Peter Nellis and John H. Bauter. John Gigorect had moved to Alexandria before he signed the petition.

NATHAN HALLOWAY recalled.

I have compared the names on the 4th page of Schedule C, beginning with John A. Bauter and ending with S. F. Fuller, both inclusive, with the names on the petition and assessment-roll. I know the persons

named. Those in the column headed "petition" are the same persons set opposite in column headed "assessment-roll," and who thus appear on the assessment-roll. I know that the person whose name appears on petition No. 7 as John Watterson is the same person appearing on the assessment-roll, John Watson. I know the man; he lives on Wells Island; I assessed him; no other person on the island of that name; he is sometimes called Watson and sometimes Watterson.

(All the foregoing evidence as to identity objected to in time as incompetent; and objection overruled, with exception.)

197 Petitioners offer in evidence articles of association (certified copy from the office of the secretary of state) of Clayton & Theresa Railroad Company, filed Feb. 7, 1871, in office of secretary of state. Rec'd, and marked "E."

Adjourned to 9 a. m., June 6.

JUNE 6—9 a. m.

R. B. BIDDLECOM recalled.

I know all the persons on the assessment-roll assessed as partners or joint owners. I have made a schedule of such persons as are on the roll and have signed the petition. The column on such schedule (mark F) headed "assessment-roll" shows how the assessment is made on the roll; and the names opposite, in the column headed "petition," show the persons composing such firm as joint owners, and as they appear on the petition. I know the persons whose names are set in the petition column of the schedule, opposite the firm or joint owners assessed, to be the persons who compose such firm or such joint owners. Those persons whose names are there set down in the column headed "petition," have each subscribed the petition. There is no railroad constructed or in operation in or through Orleans.

Cross-examination:

On the schedule those marked "P" are copartners; "J. O.," joint owners, and in "T. in C.," tenants in common.

(Schedules C, D, and F offered and read in evidence.)

198 The column on schedule "D" (left-hand column), contains the names of all the persons on the assessment-roll as they appear thereon, and opposite each name the amount of the assessment. The right-hand column, headed "names of petitioners," contains the names of all the petitioners whose names appear on the assessment-roll, and included also six persons assessed for dogs only, deducted at the foot, and the assessment of each petitioner as it appears on the roll, as is set opposite his name.

Cross-examination:

Sidney Fuller and C. P. Rood reside in Clayton. Lawrence Bratch, residing in Alexandria, owns a farm in Clayton, and his name is subscribed to the petition. He carried on the farm. Anson Harder is not assessed and is not counted. Daniel Strough is not counted.

D. W. BEARDSLEY recalled.

The name of Abram Garlock, on petition No. 4, was written by his son, Horace Garlock, by his direction, in the presence of Abram Garlock, Edmond and myself. Ephraim Timmerman was written by his wife, by his direction, in his presence, Edmond and mine. Valentine

Brightwiser, on same number, was written by his wife, by his direction, in his presence, Edmond and mine. I commenced to obtain petitions the 9th of February.

Petitioners rest.

Contestants offer to prove that Abram Raught, Merick Pickard, John Gigerick and Benjamin Post, prior to the first of May last, sold and conveyed to other parties the property assessed to them on the
199 roll, and that a portion of them signed the petition after such sale, and that none of them on the first of May, or now, had any interest in the property assessed to them on the roll, amounting to $3,065.

(Objected to as incompetent and immaterial. Objection sustained. Exception.)

Contestants offer to show that Halsey Ellis, Jacob A. Wagoner and Nelson Goodrich, appearing on petition, had not when they signed the petition, or at any time since, any interest in or ownership of the property assessed to them on the roll and claimed to be represented by them, and that during the entire year of 1870, such property was owned by their wives and carried on by them, their husbands acting as agents, and husband and wife living on the farm together.

(The assessments amounting to $1,755.)

(Objected to as incompetent and immaterial. Objection sustained. Exception.)

BENJAMIN SHIMEL sworn.

Contestants offer to prove that 67 acres of the property assessed to M'r's Barbara Eichorn did not belong to her in 1870, but then, ever since, and now is owned in fee by Lansing & Sherman, of Watertown, (assessed $600), and that of the 48 acres assessed at $460, she owned only an undivided one-third, and that the 67 acres was held by her and Jacob and Phillip Eichorn, under a contract of purchase jointly from Lansing & Sherman.

(Objected to as incompetent and immaterial. Objection sustained. Exception.)

Offer to show that Clarissa Evans, assessed for real estate $3,060, did not in 1870, or at any time since, own any of that property, but
200 it was owned by minor children of her deceased husband, Abner Evans, the children living with her on the farm.

(Objections as before. Objection sustained. Exception.)

Same offer as to Rosina Eschbacker, $1,500.

(Same objection and same ruling. Exception.)

Same offer as to Betsey Turner, widow of Rufus Turner, assessed $700.

(Same objection and same ruling. Exception.)

Offer to show that Elizabeth Balts, assessed $2,600, 230 acres, when she signed the petition, owned only 40 acres solely, and one undivided half of one hundred and thirty-nine acres assessed to her; the other half belonged to two children of her deceased husband, living with her on the farm in 1870, and the other 51 acres owned by one of the children, Geo. F. Batts, who resides with her on the farm.

(Same objection and same ruling.)

Offer to prove that the property assessed to M'r's Jacob Jenkins, amounting to $1,810 real estate, formerly belonged to her husband in his lifetime, by whose will the use of it was devised to her so long as she remained his widow, or during her natural life, and in the event of her death or marriage, the same was devised to her three children, and

that she had no other interest in the property, but was in the occupancy of the property at the time of the assessment and so continues under the will.

(Same objection and same ruling.)

Same offer as to property assessed to Elizabeth Hughes, widow of Michael Hughes, $2,500 real will with similar provisions.

(Same objections and same ruling.)

201 Paper shown witness.

Witness says: "This is my signature. I understood the paper when I signed it."

Contestants offer paper in evidence, it being a petition to county judge, signed by witness and others, claiming to have signed the petition under a misapprehension and asking that their names be stricken off petition.

Petitioners object to the papers as incompetent and immaterial for any purpose.

Received subject, marked "G."

M'r Beardsley presented a paper to me to sign last spring; I did not read it nor did any one read it to me (objected to); about 10th of February, M'r Beardsley came to the house and my son called me out to see him; he asked me how I felt about a railroad; I told him I did not want any railroad and was totally opposed to signing any bonds, in our town, for a railroad; he said they had secured sufficient stock to bond the town and the town would be bonded in 24 hours; he then drew a paper from his pocket folded so as to conceal the heading; I told him I had said I would sign no paper to bond the town; he said this was not; they had already secured enough to bond the town; he said there was a strong opposition which way the road should be located, Stone Mills or West Theresa; he then said this paper is merely to get the opinion of the people through this section about the road, which course; I told him I would sign no paper for bonding the town, but if the road had got to go, I was in favor of its going through West Theresa; he then wanted me to put my name on that paper; I told him if this paper was not for bonding the town, I would sign it; he said it was not,
202 and I signed it; this was in presence of my son' Walter and Edward Chrisman; they are both here. I signed the paper, believeing Beardsley's statement that it was simply to determine the location of the road; would not have signed it if I had supposed it was for bonding the town; this is my signature, (petition No. 4.) I sent word to Beardsley, by Anthony Herbrecht, to take my name off; this is the only signature I have written for Beardsley. I do not assent to bonding the town and I request my name to be stricken from the petition. I own the real estate assessed to me and reside in Orleans. (Assessment, $700.)

Cross-examination:

This is my signature to petition; it was made in my house the 10th day of Feb. My daughter-in-law and Beardsley were present in the room when I signed, late in the afternoon; had conversation at the door and passed into the house. My son, son-in-law, and Henry Gray were present at all the conversation. Beardsley laid the paper down on the table, and I signed it; did not see the heading; think Beardsley first said he had come to see how I felt about a railroad. I told him I was opposed to bonding. He said the town was already to be bonded, and would be within 24 hours. He said he simply came that way to see how I felt about the location; told him at first that I did not care which way

it went. I finally took the paper and went into the house and signed it. My son said if the road had to be built, it had better go by West Theresa; nothing else was said by any one. I have never said anything to Beardsley about the matter since then, and have never called on him for an explanation.

WALTER SHIMMEL sworn.

Son of Benj. Shimmel; heard him testify; heard talk with
203 Beardsley. Beardsley said the paper was for the location of the road, whether it should be through Stone Mills or West Theresa. Father said he would sign no paper for bonding the town. Beardsley said it was not for bonding the town; it was merely for the location of the road. He said the town would be bonded in 24 hours, and he wanted to know which way my father wanted the road. He did not want to sign, and I told him if the road was going through, it had better go by West Theresa. He then said if the road was going through, he would put down his name to have it go by West Theresa. This conversation was outside the door. Father and Beardsley went into the house. Henry Drake and Edward Chrisman, Beardsley and Edmonds, were present at the conversation. Beardsley and Edmonds both said when father said he was opposed to bonding the town that they were too; paper was not read there by any one; it was not unfolded or shown father by any one outside.

Cross-examination:

Age 23; live with father; have talked the matter over with father. M'r Edmonds came with Beardsley; came in afternoon, in horse and cutter. Chrisman, Drake, and myself were at the door when Beardsley drove up. Father said he was opposed to bonding the town. Edmonds and Beardsley both said "We are too." When Beardsley took the paper out of his pocket, I saw that part of the petition was written, and part printed; saw that there was some names on the paper. I have talked with Bort and other parties upon the subject of my testimony.

EDWARD CHRISMAN sworn.

Was present at conversation between Beardsley and Shimmel.
204 Edwards and Beardsley came and asked where Shimmel was. His son called him out. Beardsley said he had a petition there, and he was round getting people to sign whether the town should be bonded or not. Shimmel said he did not want it bonded. Beardsley said the paper was not to bond the town. He said it was to get the majority to see which way the road should go through, West Theresa or by Stone Mills to Watertown. Shimmel said he would sign no paper to bond the town. His son said if the road was to go anyway, it had better go through West Theresa; did not see the paper or hear it read.

Cross-examination:

Son-in-law of Shimmel, and live with him; first think Beardsley said he had a paper there to get subscribers to see which way the road should go. Don't remember hearing Edmonds say anything. I did not see any paper. Edmonds said he came around with Beardsley because Beardsley was not acquainted, and so got him to come with him. Beardsley said he had a paper to see which way the road should go—by Stone Mills or Theresa.

HORACE GARLOCK sworn.

Reside in Orleans: own property there; assessed for 64 acres of land, $865. (Paper G shown witness.) This is my signature. Father's name is Abram Garlock—resides in Orleans—owns and is assessed for real estate, $1,505. Father is not feeble but is deaf. His name is to paper G. I wrote it by his direction and in his presence. I signed a petition for bonding the town, knowing what it was. Edmonds and Beardsley presented the paper to me, and told me it was for bonding the town of Orleans for a railroad from Clayton to Theresa. I said I was
205 against bonding the town. They said people were around with a paper to bond the town for a railroad running through Stone Mills to Watertown. I said if that was the case, and the town was to be bonded anyway, rather than have the road go through Stone Mills, I would sign to have it go by Theresa, and I signed it. They did not say who was circulating a petition to have it go by Stone Mills. I signed it solely upon the ground that an effort was being made to have it go through Stone Mills, and only as a choice of location. I would have signed the petition for bonding it if nothing had been said to me about a petition having been circulated to bond for a road through Stone Mills. I am in favor of the road anyway; if we can have it without bonding, all right; but if not, I am in favor of bonding.

Recess for dinner.

EVA JENKINS sworn.

Am the widow of Jacob Jenkins; join farms with Benjamin Shimmel. Beardsley and Edmond came to me the last of January, or the first of February, to get me to sign a paper. They said they had been to Shimmel's that day. M'r Edmond came in and introduced M'r B. Edmond; said he had come to get me to sign a paper about the railroad. I said we did not want any railroad; asked if it was for bonding the town. He said no, it was not. I said I am not in favor of bonding the town, and I am not in favor of a railroad. Edmond said we have got to have a railroad, and out of two evils we must choose the least. I have come to see which way you want the railroad to go. I told him if we had to have the railroad, and could not avoid it, I would rather it would go by West Theresa. They said the town would be bonded in a
206 short time for the other route by Stone Mills, if they did not get us to sign this paper, to have it go by West Theresa; I said I would go and see what my sons said about it; they were at a steam saw-mill at work near by, and M'r B. said he would carry me there in his cutter, and he did so; I talked with the boys about it, and they both said, now, this is not for bonding the town, and Beardsley said no; he said it was to get the voice of the people to see which way the road should go, by Theresa or Stone Mills. My sons said I could do as I liked, but if they had got to have a road, they would prefer it would go by Theresa. I went back to my house and signed; I did not read the paper and no one read it to me; I don't think I would have signed the petition if I had been informed that it was a petition to bond the town; I think the signature shown me is mine; I did not see any of the printing on the paper that I signed; my name was signed to the petition presented by M'r Irwin, by my direction. I don't want my name on the petition for bonding the town; never signed but one paper presented by Beardsley and Edmond; assessment $1,810; M'r's Peter Helmer was present at the conversation at the house with Edmond and Beardsley. Edmond was not at the mill when I was there; the conversation was between my sons, Beardsley and myself; Edmond said

we have come, I hardly know what to call it, to see about the railroad, to see what route I wanted it to go; I understood that he was opposed to bonding; neither Edmond or Beardsley stated the contents of the paper; I may have said that I would not sign till I saw my sons, as they had part of the taxes to pay.

WALTER JENKINS sworn.

207 I am a son of the last witness; remember her coming to the mill with Beardsley; I did not see the paper; Beardsley said it was to see whether we wanted the road to go by Theresa or Stone Mills; I was in the mill below; mother said here is a man who has come to see about the railroad; my brother Willard asked Beardsley if this was to bond the town; Beardsley said no, sir, it is not, it is only to see which way we wanted the road to go; my brother said he wanted the road to go by Theresa; I said yes, our land in Theresa would be worth $75 per acre the moment the road went there; mother asked me what I thought about signing it; I told her to do as she liked, and I went off.

Cross-examination:

We stopped the mill when Beardsley came in, and my brother and I did nothing while he was there; brother asked if it was for bonding, because we had heard they were coming around to bond the town; Willard said if we had got to have a road, he would rather have it go to Theresa; might have it go near by as long as we had got to help pay for it; I told M'r Bort what occurred at the mill.

ELIZABETH HUGHES sworn.

Reside in Orleans; M'r Beardsley and Edmond came to me last winter to get me to sign a paper; think fore part of Feb.; live one half mile from Shimmel; had a conversation with them before signing; my two boys, John and Patrick, and James Guest, a hired man, were present; boys 17 and 20 years old; M'r Beardsley said they had come to have me sign a paper for the majority of the railroad, to run from Theresa to La Fargeville or Stone Mills. I told him I did not like to sign any paper; he said it was no harm; he was getting the majority of the people
208 to sign for the road to Orleans Corners; the hired man asked Beardsley if that was to bond the town; B. said no, the town was already bonded, and said, when we have to pay taxes let us have the road where it will do some good; I then signed the paper supposing it to be an expression in favor of the road by Theresa instead of Stone Mills; I was not informed and did not understand that it was for bonding the town; I would not have signed it at all had I been told it was for bonding, and I now desire that my name should be taken off the petition. I wrote my name; M'r Beardsley laid the paper down on the table, and I did not see any printing on it; after I learned that I had signed the paper, I went to La Fargeville to have it taken off; I signed the paper marked "G."

Cross-examination:

The last paper was read to me; Beardsley was at my place but few moments; my son said nothing; nothing had been said about bonding before Guest spoke and asked if the paper was to bond the town; Beardsley said it was not, the town was already bonded; Beardsley said I would have more tax to pay if the road went to Stone Mills.

(Assessment $2,500.)

ANDREW M. LOUCKS sworn.

Reside in Orleans; Beardsley and Edmonds applied to me to sign a paper sometime in February; I opened the paper and looked at and read most of the names signed to it; they said they were around on railroad business, and were trying to get a majority of the tax-payers to sign it to get a road from Clayton to Theresa; they said they
209 wanted to bond the town for $80,000; I said I was not in favor of bonding the town; they said the people about Stone Mills were trying to bond the town for a road from Clayton to Stone Mills, and unless they could get enough to sign it to run to Theresa, they would just try to run it to Stone Mills and Watertown; I told them if the town had to be bonded, and must be bonded, I was in favor of its going by Theresa, because it was a nearer route and would take less money to build it; on those grounds I signed the paper; I knew I was signing a petition to bond the town for a railroad from Clayton to Theresa; should not have signed if I had not been told that the town would be bonded; I signed the paper marked "G"; I would rather my name would be off the petition for bonding.

STEPHEN GETMAN sworn.

Reside in Orleans, two miles from Orleans Four Corners.

JOHN DOW sworn.

Reside in Clayton; signed the petition; two pieces of land assessed to me, and I have paid taxes on both; my son-in-law lives on the 194 acres; [objected to by petitioners;] when I signed it, I intended to represent the whole land; since then my son-in-law came to see me, and wanted me to get my name off; I wanted it to stand for the whole.

JEROME BUSHNELL sworn.

Resided in Watertown more than four years; [obj.;] I have never owned the property, 1-8 acre, $120, assessed to me in Orleans; it is owned by my father; it joined my store; it has been assessed to me, and I have paid the taxes on it for ten years; have rented it for my father.

210 SIMEON FULTS sworn.

I signed petition; Biddlecom presented it to me; Barker was present; before I signed a paper was given to me.

Q. Will you produce the paper?

A. It is a private paper, and I decline to produce it, unless the court require it; received the paper two or three minutes before I signed the petition; I had refused to sign the paper unless under certain circumstances; Barker, Biddlecom, my wife and myself were present; I first suggested their giving me a paper; I agreed with Barker and Biddlecom not to show the paper without their consent; they came and said they had come to see if they could get me to sign in favor of the road; I said I was not in favor of the road, unless it could be made a through route, without a dollar's shave; they told me that was just the ground they stood on; I should have signed the petition without the paper having been given me.

Paper offered in evidence. Objected to, as immaterial and incompetent. Received subject, copy marked "H."

Adjourned to 9 a. m., June 7.

JUNE 7—9 a. m.

VALENTINE BRIGHTWISER sworn.

Reside in Orleans, and am a tax-payer there; my wife wrote my name to the petition, (No. 4;) it was in the winter, when there was sleighing; I live about a mile from Shimmel; my name was signed at my house; Beardsley and Edmonds, my wife and myself were present; Beardsley and Edmonds came there about noon; Beardsley first spoke and talked about railroads; said they were going to have a meeting at
211 Stone Mills in a day or two, to have the railroad go through Stone Mills; and the road would go through the town any way, and they were around with a subscription to have the road go from Clayton to Theresa; I told them if they were agoing to have a road any way I thought it better go to Theresa, as that would be the shortest and cheapest way, and on those grounds I signed the paper; there was nothing said that that paper I signed was for bonding the town.

Q. Did you understand, at the time you signed, that you were signing a petition to bond the town for a railroad?

(Objected to as incompetent. Received subject.)

A. I did not; I understood I was signing simply as a choice of two roads; I did not read the petition; they did not read it to me; they stated what they claimed was the contents of the paper; they said the Stone Mills people were trying to get a railroad through there, and they were around trying to get the start of them, and get a road to Theresa; I signed a paper for M'r Bort and Irwin the other day; I understood it was a paper for not bonding the town; have never been in favor of bonding the town for a railroad; I now desire that my name be taken from the petition for bonding the town. (Assessed $2,745.)

Cross-examination:

I was subpenæd by M'r Lingenfetter; my wife is not here; she could read, I cannot; paper was handed to her when she signed my name; I don't know whether she read it or not; Beardsley and Edmond said they came about a railroad to Theresa; something was said about $80,000; I told them I paid taxes enough; Beardsley said the road would be profitable, and would pay for itself after three or four
212 years; I heard afterwards that there was a meeting at Stone Mills; there was talk about the railroad increasing value of property.

Redirect:

I told Beardsley and Edmonds that I was opposed to bonding the town; should not have signed the paper had I been told it was for bonding the town; I had no suspicion when I signed that the paper was a petition for that purpose.

JEREMIAH TIMMERMAN sworn.

Reside in Orleans; I signed the petition No. 4; (assessed $1,820); I think it was in February that I signed it; was at Merrit Pickard's house, next neighbor to me; it was in the evening; M'r Pickard and wife, Beardsley and Edmond were present; I was there when they came; they wanted Pickard and myself to sign a paper; said there would be a meeting at Stone Mills the next day; said they were coming from Watertown to meet them there with $100,000 or $200,000 to have the road go through Stone Mills; they said they wanted it to go from the Creek to Theresa; said it would cost $70,000 or $80,000 from the Creek to Theresa, and over $100,000 or $200,000 through Stone Mills; said the

road was going through one way or the other; I said if the town had to be bonded I would rather it would go from Theresa to the Creek; I told them that I was not in favor of bonding the town; Edmond said that he was not either, but would rather bond the town than have the road go by Stone Mills; they urged me to sign the paper; Pickard signed it and then I did; I think the paper was not read over to me; I did not read it or look at it only as I put down my name; I understood
213 that they wanted to see if they could not get the majority to have the road go from Clayton to Theresa; I did not understand that it was a paper for bonding the town; if I had understood (obj. to) that it was a paper for bonding the town, I would not have signed it; I supposed that the paper was to get the majority of the people to see if they were in favor of a railroad; I supposed the paper was an expression in favor of the Theresa route over the Stone Mills route; I signed a paper for Bort and Irwin, requesting my name to be taken from the petition; it was read to me; I am against bonding the town, and I request the judge to strike my name from the petition.

Cross-examination:

Neither Pickard or his wife are here; I was subpenaed last evening; I knew of this proceeding but should not have come unless I had been subpenaed; I think Beardsley handed me a paper; I read printing and writing; they told me the paper was for a railroad from Clayton to Theresa; they talked about $80,000; there was talk about taxes. I afterwards heard there was a meeting at Stone Mills. The paper they asked me to sign was to get a majority of the people to fix the road from Clayton to Theresa; they said the town could be bonded before to-morrow night. I may have said I had taxes enough to pay now; think they said something about the road being profitable and finally taking care of itself. I did not expect that a road could be built from Clayton to Theresa without bonding.

JEREMIAH PETRIE sworn for petitioners.

Reside in the city of Watertown; formerly in Orleans; moved from there three years ago. I own real estate in Orleans and did in 1870, and
214 was assessed thereon, and paid a tax thereon; I desire to join in this petition and to become one of the petitioners in this matter, and to subscribe my name to the petition.

Cross examination:

First application to me to join in this petition was yesterday. I lease the farm for so much and pay the taxes myself. My name is c . he assessment-roll for 1870; assessed $4,200.

(Contestants object to his signing the petition, as he is non resident of the town, and no authority to sign at this time. Overruled. Exception.)

Signed petition No. 2.

MARCEL SIMONETT sworn for contestants.

Reside in Orleans and am a tax-payer there; knew Beardsley 10 or 15 years; done business with him at his store; signed petition (No. 4); signed about middle of February, in the lot behind my barn; my hired man, James Guest, was present; M'r Beardsley was at my neighbor Wetterhorn's; I was going by; Beardsley came out and jumped on my sleigh, and said I want you to sign this; I have got a paper, a petition about a railroad. I told him I would sign no paper on railroad business

on no condition whatever. He said they were going to have a road by Stone Mills and would tax the town several thousand dollars more than if it went the other way. I said I did not care what it cost; I did not want to bond myself for any road whatever. He made no answer; he said that was all right—if you don't want any railroad, and is what I want, sign my paper. I signed it; I did not read the paper; don't recollect whether Beardsley read the paper or not; I could not read
215 the paper with the spectacles that I had on; I signed paper G; it was read to me; I understood what it was; I was opposed to bonding, and am still; would not have signed the petition if I had supposed it was for bonding the town; I now request the judge to strike my name off the petition.

Q. State whether you desire your name stricken from the petition because you did not understand, or was not informed it was for bonding the town.

(Objected to as leading. Sustained. Exception.

Same question, with the words added, "If not, what for?" Same objection and ruling. Exception.)

Q. What did you understand the paper to be when you signed it?

A. I understood it to be a paper against the Stone Mills road; I was not informed that the paper was a petition for bonding.

(Assessed $2,390.)

Cross-examination:

I was subpenaed here as a witness; had heard of this proceeding here; my hired man is at home; I supposed from what Beardsley said, that the paper was a petition to the county judge; there was talk about $80,000; I was opposed to the road on account of taxes; I so stated to Beardsley; there was talk about the Stone Mills route and the Theresa route; I expressed a preference for the Theresa route; I understood the paper was to defeat the Stone Mills route, and not to build another road; he may have read the petition to me; I understand several languages; I saw the print upon the paper; Beardsley held it up before him, when he was talking about it; have never said anything to Beardsley about it since.

Redirect:

216 Beardsley did not say or read anything about bonding the town; first learned 3 or 4 weeks ago what the petition contained.

SOLOMON PICKARD sworn.

Reside in Orleans, near steam sawmill, near Pamelia line; signed petition No. 4; I did not read the petition, and no one read it to me, as I recollect; Beardsley and Edmonds said it was a paper concerning a railroad; they said there were two routes, one from Clayton to Theresa, and one by Stone Mills; and they wanted to know which one I was most in favor of having. I told them if we had to have a road through the town, I was in favor of having it from Clayton to Theresa; told them I was not in favor of any, as it would not make it any better for me. They said we would have to have a road through the town, one way or the other, and had a paper to have it go by Theresa; I told them I kind of hated to sign it, but if we must have a road, would rather have it that way; I then signed petition.

Q. Was you in any manner informed, at the time or before, that paper was a petition for the appointment of commissioners to bond the town, and, if so, how?

A. They said the road over the town would cost about $80,000; I did not understand it exactly to be a petition for bonding; I understood it was to defeat the Stone Mills route; I don't recollect what was said on the subject of bonding the town; I would not have signed the paper, if I had understood it was for bonding the town, and that we were not obliged to have a road; I signed paper marked "G;" if I have my choice
I would rather have my name just where it is on the petition; if
217 the town is bonded, I can stand my share with the rest; M'r Biddlecom told me this week that the town should not be bonded unless the road could be consolidated with the Utica road.

Cross-examination:

It strikes me the petition was read to me before signing; I had heard about the Stone Mills route before signing; I understood the paper that Beardsley had was a petition for a railroad; that it would cost our town $80,000, and that the amount would be represented by bonds; I understood from M'r Edmonds and Beardsley, that it was a petition for bonding the town.

CONRAD SHIMMEL sworn.

Reside in Orleans, near head of Perch Lake; I signed petition No. 4; made my mark; my name written by M'r Beardsley at my house; M'r Beardsley and Edmonds were present, and my wife; it was in the winter, near evening; Beardsley and Edmonds came there together; they said they were around with a paper to get signers for a railroad; I asked where it commenced; they said Clayton, and run to La Fargeville; they said there were two routes from La Fargeville, one to Stone Mills and the other to Rappole Corners; they said it would cost $80,000 through the town to Theresa, and a great deal more by Stone Mills; I said I did not want the town bonded; had taxes enough to pay; they said I could not help myself, as they would get a majority; I said then I have a yoke upon me; I still did not want to sign; they said my neighbors had all signed, and showed me the paper, and I saw they had; they told me Anthony Herbrecht, Benjamin Shimmel, Solomon Pickard, and others, had signed; they did not read the petition; when I
218 signed, they folded up the paper and put it in their pocket, and took out another and left with me; the paper they left was for bonding the town; I understood the route by Stone Mills would cost the most, and of the two evils, I would choose the least; I was opposed to bonding, and am now; I signed paper marked "G;" it was not read over to me; I don't want the town bonded; I would not have signed if my neighbors had not done so.

(Assessed $1,080.)

Cross-examination:

I knew what I signed, but I was sorry afterwards that I done so.

PHILLIP ZIMMER sworn.

Reside in Orleans, and am a tax-payer there; assessed $1,370; I signed petition (No. 1) in January or February; it was at my house; M'r Biddlecom and Esq. Eddy came to my house in afternoon; M'r Biddlecom said, "Do you want a railroad?" I said "Yes, I wanted a railroad, if the company would build it themselves; but did not want the town bonded." M'r Biddlecom said "No, the town not bonded." He commenced figuring, and said if they had a railroad from LaFargeville to

Theresa, it would bring 14 or 15 per cent. a year; said the land would be worth a great deal more; he said if the town be not bonded, I would sign the paper; I told him I could not read it; he asked me if my children could not read it; I told him to read it himself, and he read it, but I understood not much; I then asked him if that paper was to bond the town; M'r Eddy said, "Oh no, Philip; I want not to pay more taxes than I have got to pay now"; I then signed the paper; my wife said you will find it out when you pay taxes whether the town
219 is bonded or not, and M'r Eddy said, "Yes, you will find it out then." They were there about an hour. I don't want the town bonded, if every other man in the town is in favor of bonding. I want my name off the petition. Soon as I heard I had signed a petition for bonding, I went to see Eddy, and told him I wanted my name taken off, and that I understood it was not for bonding; Eddy said I did not understand it; I inquired for Biddlecom, and Eddy said he was away from town, and if I did see him I could not get my name off. If I had understood that it was a petition for bonding I would not have signed for fifty dollars.

PHILLIP ZIMMER recalled.

Cross-examination:

M'r Biddlecom and M'r Eddy came to my house about the middle of the afternoon; my wife and oldest daughter were present; they are at home now; Biddlecom asked on coming in if I was in favor of a railroad; I said "Yes, if it could be built by the company." Biddlecom had a paper with him; showed it to me; said nothing about the cost of the railroad; asked how much my tax was last year; Biddlecom did not tell me my tax would about $14 more per year, and that if it was any more he would pay it; said if the road was built by Theresa my tax would be a little more, and if it went by Stone Mills it would be $85,000 or $90,000; Biddlecom read a paper to me; perhaps he was two minutes reading it; talked about the tax being larger. I did not say, do I sign to be taxed or for a tax; I did not say, do I sign to pay anything; my wife said I would find out when I pay my tax; M'r Eddy did not then say I would pay with my tax; the paper I signed was to build the road to Theresa.

220 Q. Did you understand that we could build the road to Theresa without money?

(Objected to as incompetent—not proper cross-examination. Overruled. Exception.)

A. No; before Biddlecom came there I had heard about a railroad from Clayton to Theresa, and also about the road through Stone Mills; I had talked about bonding the town, and I knew Biddlecom was around with paper to bond the town and had got names for that purpose; I understand when Biddlecom came there that he came there to bond the town; my wife told me that Biddlecom was there in the morning; did not tell me what for; I understood before Biddlecom came that if the town was bonded, it was for $80,000.

Redirect:

I did not understand the petition when it was read to me.

GEORGE SOURWIEN sworn.

Reside in Orleans, near Stone Mills; tax-payer; assessed $1,170; signed petition No. 2, at my farm, 5 or 6 weeks ago; M'r Biddlecom brought the paper to me; Samuel Gates was with him; Biddlecom

said he was round with a paper to get a few more names and prevent making any further cost. He said he had names enough, and more, to bond the town, but wanted to get a few more to make the other party so much weaker. I told him I was against bonding the town, and did not think I would sign it. He talked to me; I said I would sign it, but not with the understanding that I was in favor of it. I would not have signed it had it not been represented to me that there was al-
221 ready a majority; wanted me to sign to stop litigation. (Objected to.) Am not now in favor of bonding; if it requires my name to make a majority I want it off.

Cross-examination:

I understood perfectly when I signed the petition that it was for bonding the town.

GEORGE DORR sworn.

Reside in LaFargevitle; signed petition (No. 1); I signed it in February; Nelson Goodrich, Biddlecom, my wife, and children present, about 9 a. m.; Biddlecom and Goodrich came there together; they asked me to sign the paper; I told them I did not like to bond the town; petition was not read to me; can't read English, only my name; they told me paper was for railroad from French Creek to Philadelphia; I told them I don't like to sign it and bond the town; they keep talking; staid there half a day and took dinner; Biddlecom told me my tax would not be over $22 for about 2 years, and never pay a cent afterwards; I said I would give that any time for a railroad; he said he would give me a writing to that effect, but I told him I would not take it; I then signed the petition; I would not have signed the petition except for the representation made by Biddlecom.

Cross-examination:

I signed paper G for M'r Bort; he told me it was to come to Watertown to-day to see about the railroad; I think there is nothing in it against bonding.

(Assessed $1,070.)

HENRY DORR sworn.

222 Live near LaFargeville; signed paper for M'r Biddlecom three or four weeks ago; signed it at my house, petition No. 2; M'r Biddlecom was alone about 4 p. m.; my wife was there and my boy Henry; M'r Biddlecom told about the railroad; I told him I wont no sign it; I understood him to say the tax would be paid in three years; I told him I would not sign it, because my share would be $200 or $300. He said it would cost no more, or not much higher. He said my share would not be made more than $300. I told him if it cost no more than that, I wanted to sign it; I did not know I was signing a paper to bond the town; I said if I could pay it in three years I would sign, but did not want to bond for 30 years. I was willing to be taxed myself, but did not want my children taxed; I signed the paper G, for Bort and Irwin, not in favor of bonding town; I wanted to pay my share for three years, but don't want any bond on my town.

Cross-examination:

Bort and Rotiers brought a paper to me that I signed for no railroad. They tell the town be bonded. I said, I no want it bonded. Biddlecom told me it would cost me if I paid the whole, of $18 or $20 per year, and would not cost over $300 in all, or a little over. Biddlecom did not

tell me it was not to bond the town. He said my share would be a little over $300. I said I was willing to pay $300.

(Assessed $1,775).

ANTHONY HERBRECHT sworn.

Live in Orleans, eastern part. Biddlecom and Edmonds came to me with a paper to sign; it was sometime in February, I think. They told me they had a paper they wanted me to sign. I asked them if it
223 was against bonding the town; they told me "No, it was for it." I told them I would not sign it; I was not in favor of bonding the town. They said the town would be bonded anyway, by to-morrow noon; said the Stone Mills folks had a meeting to-morrow, and then it would be decided which way it would go. I said if the road was going, and had to go, I was in favor of its going by Theresa, but was not in favor of bonding the town for a railroad. I looked at it, but did not read it all, then signed it. They showed me the names that had signed. I know the paper was for bonding the town when I signed it. I relied upon their statement that the town would be bonded; would not have signed the paper if they had not told me it was to be bonded anyway; am opposed to bonding now. I signed the paper G. I don't want my name on petition.

Cross-examination:

I am opposed to bonding on principle, but I did consent to sign the petition. I prefer the northern route, if the town is to be bonded; think the meeting was held at Stone Mills the next day, as they said; think they said if they got names as fast as they had the town would be bonded to-morrow night.

Redirect:

Think it was after I signed that they said if they got names as fast as they did the town would be bonded to-morrow night. Read the paper to me after I signed it.

CALVIN D. GRAHAM sworn.

Resident and tax-payer of Orleans. Live near Stone Mills, and have for fifteen years. Attended all the meetings relating to a railroad held at Stone Mills on the Saturday after town meeting.

224 Q. Was there at any time a petition in circulation in reference to bonding the town for a road through Stone Mills?

(Objected to as immaterial and incompetent. Received, subject.)

A. There was not to my knowledge. (Objected). There was a division among the people. A portion were opposed to bonding for any road, and others thought the town would be bonded, and preferred that it be bonded for a road through Stone Mills. At the last meeting a resolution was adopted against bonding. This meeting was numerously attended; think this was after town meeting. Previous to this meeting remonstrance had been circulated against bonding. (Copy of the remonstrance offered and received in evidence, marked "I.") A week afterwards, at the second meeting, another paper was made and put in circulation about February 13th.

(Paper offered and received in evidence, marked "K.")

Cross-examination:

I signed both papers. I circulated last paper marked "K."

SYLVESTER GREEN sworn.

Live one-half mile from Stone Mills, in Orleans. Have no knowledge

of the circulation of any petition for bonding the town for a road through Stone Mills.

(Under objection.)

Conceded that the signatures to petition No. 4, with the exception of John Spalesbury, were procured in the order in which they appear on the petition.

MARY BARLOW sworn.

Live in Orleans. Saw M'r Beardsley; M'r Beardsley and Edmonds came to my house. Am in my 75th year. Born in Ireland. Can't read or write. They asked if I was in favor of a railroad, and I said no. They asked me which way I wanted a road to go, Stone Mills or Theresa. I said if it was to go through, would rather it would go to Theresa. They said they had a remonstrance against the Stone Mills route. They said they had got such and such names; all the neighbors round about. I then said they might put my name to it, and M'r Beardsley wrote my name and I signed it. They did not read the paper to me; did not tell me it was a paper for bonding the town, but they said the town would be bonded. I did not know what bonding meant; all they told me about what the paper was, was that it was against the Stone Mills route. I learned afterwards that it was for bonding the town. Had I been informed that it was for bonding the town I would not have signed it. M'r Bort presented me the paper G, and I directed my son to write my name to it. My daughter Hannah was present when Beardsley and Edmonds were there. If the paper I signed is a petition for bonding, I want my name taken off it.

Cross-examination:

My son Lyons was there all the time Beardsley was there; he is 27 years old; he talked with Beardsley. They said theycame there to get names to a petition to bond the town, and that this paper would be a remonstrance against the Stone Mills route. I understood this was for a road through Theresa. Nothing was said about taxes. I signed because I was overcome by all the stories and the remonstrance
226 signed by all the people. I understood the paper they wanted me to sign, was for a railroad from Clayton to Theresa. My daughter wanted me to sign the petition.

CATHARINE BRIGHTWISE sworn.

Am wife of Valentine Brightwise; was present when Beardsley and Edmonds came to get him to sign a paper. I heard some of the conversation, but did not pay particular attention to it. They said there were two parties, one for Stone Mills and one for Theresa road. I heard nothing said about bonding the town. M'r Beardsley said the road would go through, hit or miss, and would cost a great deal more to go through Stone Mills. My husband said if the road had got to go any way, he would prefer to have it go by Theresa. I saw Beardsley show him the names on the paper. I did not hear the paper read; it was not read.

Cross-examination:

I signed my husband's name. There was something said about $80,000, but I don't remember what it was; don't remember hearing anything said about taxes. Did not pay much attention to what was said. They said there was to be a meeting at Stone Mills, and the railroad would go through, hit or miss.

JOSEPH FULTS sworn.

Reside in Orleans, northerly part, three miles from LaFargeville; signed petition No. 1; signed petition at Levi Pierce's house some time in February; Pierce and wife, Biddlecom and Jerome were present; Biddlecom and Jerome said they come on railroad business, and wanted me to sign a petition. M'r Biddlecom read it; M'r Biddlecom said there was a dispute as to where the road should go—a
227 part of the folks wanting the road to go to Stone Mills and a part to Theresa. I was opposed to signing the petition; I understood them to say that the town would be bonded; I refused to sign it for a good while; finally I made up my mind to sign for a road to go to Theresa rather than to have it go the other way. I then signed it; I would not have signed it if it had not been represented to me that the town would be bonded anyway. I signed paper G; I read part of the names; M'r Bort read a paper. I was never in favor of bonding the town.

Cross-examination:

I knew the contents of the petition when I signed it—that it was a petition to the county judge to appoint commissioners to bond the town for $80,000. I understood from Biddlecom that he thought a road would be built, and that the town would be bonded. He did not say that the town would be bonded. I thought if the town was a going to be bonded I would prefer the road to go by Theresa, and I signed for that reason. I would prefer to have my name on the petition rather than have the road go by Stone Mills.

Adjourned to 9 a. m., June 8.

JUNE 8—9 a. m.

WILLIAM MAHANNA sworn.

M'r Biddlecom presented me petition No. 1, and my son signed my name for me. M'r Biddlecom came to me when I was at work in the lot, and asked me what I thought about the railroad. I told him I had thought but very little about it. He asked me if I was in favor of bonding the town; told him I was not. He said he was sure the town would be bonded without any doubt, and the road would go by Shanty-
228 ville or Stone Mills; I told him I would not sign my name to bond the town under any consideration. He said to-morrow there was to be a meeting at Stone Mills to try to get the road that way; said the expense to go by Stone Mills would be nearly double what it would be by Shantyville. He asked me if we were agoing to have a road whether I would prefer to have it go by Stone Mills or Shantyville; told him if the town was to be bonded, I preferred the Shantyville route. I asked if I signed the paper whether that would hold me responsible to bond the town or not; told him if it would hold me responsible I would not sign the paper. He told me if it would hold me to bond the town he would pay me $500. My son then signed the paper by my direction. My son signed paper G, by my direction; I heard it read. M'r Biddlecom did not read the paper he had to me; I did not read it nor did my son. (Obj.) I did not understand that my signing the paper would hold me for bonding the town; I am not in favor of it; want my name taken off the petition.

Cross-examination:

Think I signed the petition in February; M'r Biddlecom, esq., Eddy, and my son Cornelius, and myself were present; my son is at home; heard all the conversation. Before Biddlecom came there I had heard

a road talked about from Clayton to Theresa; I had heard the town was to be taxed to build it. M'r Biddlecom first spoke and asked me what I thought about bonding the town; told him I had not heard much about it; asked me if I was in favor; told him I was not. He said the town would be bonded without any doubt; that there was to be a meeting at Stone Mills to try to get the road that way, and he was anxious to get it out of their hands and get the road through Shantyville; that it would cost the town nearly double to go by Stone Mills. I told him if the road was to be built by bonding the town I preferred to have it go by Shantyville. M'r Biddlecom said if I would be responsible by signing those papers for bonding the town, he would bind himself to pay me $500; don't remember anything being said about the number of taxable inhabitants or amount of taxable property in the town. I understood that the paper he wanted me to sign was a petition of some kind.

HANNAH BARLOW sworn.

Daughter of M'r's Mary Barlow; was present when Beardsley and Edmonds came. They said they wanted my brother to sign for a railroad; he said he had tax enough to pay and would not sign. They said that was just the way everybody talked when they came in, but when they came to tell them how it was, that if they did not, the Stone Mills folks would have a road through from Watertown, and it would cost the town a great deal more, and that the town of Watertown would raise $100,000 to run a road through Brownville, and that would entice the Stone Mills folks to meet them, and it would cost the town a great deal more to go that way. My brother said the town was not bonded yet, and they said it was in such shape that it would be bonded whether he signed or not. He said he would not sign anyway. They went on to prove what a benefit it would be to the town, and how much cheaper freight would be carried, and he might as well have his choice of route, but he refused to sign anyway. They said they would not have to pay taxes only about three years, and after that the receipts of the road would go into a sinking fund to pay the debt of the road and that it would be a benefit to the country, as it would raise the value of the land and be a benefit to the town, as the road would be taxed, and then help pay the taxes of the town; that they had a guaranty from some company to furnish the rolling stock and make a through route to New York by Philadelphia, and make freight cheaper. They said we would have to pay the taxes anyway, and we might as well have our choice of route; that the town would be bounded anyway, and wanted us to sign to defeat the Stone Mills folks; that signing the paper would act as a remonstrance against the Stone Mills route. When they could do nothing with my brother, they tried to get my mother to sign. She said she did not understand it, and asked me what they wanted me to do, and what they wanted her name for. I told her they said they wanted her name to say which route she wanted. I asked them if that was so, and if the taxes would be all the same. They said they would be more the other way. I said, if what they represented was true she might as well sign and choose her route and have the road where it would be of some benefit to her. They assented to that. My mother was in the room during the conversation with my brother. She cannot hear very well. I did not hear the petition read, or its contents stated, except as I have said. They were there about two hours.

Cross-examination:

My mother, if she had got to pay a tax, preferred to have the road go this way, and signed for that reason. The conversation with mother was very brief; can't say if there was anything said directly to my mother about taxes or bonding. There was something said about the two routes. They turned to my mother. I wanted her to sign the paper to have the road go through from Clayton to Theresa. They said
231 if she did not sign the paper the Stone Mills folks would get the start, and this paper would act as a remonstrance against the Stone Mills route; can't say whether anything was said about $80,000 in that conversation; I think there was, but have heard so much about it since that I cannot say it was said then whether that was what it would cost the town. I understood he wanted to get a majority on his paper.

Redirect:

There was nothing said to my mother that they wanted her to sign to bond the town. They did not ask my brother to sign for the purpose of bonding. He told them the town was not bonded yet. They said that it was in a shape that it would be.

THOMAS HOGAN sworn.

Reside in Orleans; signed petition presented by Mr Biddlecom; he had been at me several times; finally met me in the road at La Fargeville; he came up and said, "Now, do you want to sign that petition to have the road go through from Clayton to Theresa?" I said, "Yes, sir." He gave me the paper, and I took it, jumped off my sleigh, and went into the store and signed it. I did not read it. [Under obj.] I did not understand that the paper was anything more than a paper to fix the location of the road. If I had understood it was a petition for the appointment of commissioners to bond the town of Orleans I would not have signed it. I am opposed to bonding the town. I signed paper G. Bort read it to me in the road. I would like to have my name taken off the petition to bond the town.

Cross-examination:

232 I have heard of the project of a railroad. Heard that it was proposed to bond the town, and heard various sums spoken of as the amount they proposed to bond for. There had been talk between Biddlecom and myself about my taking stock; think there had been no talk between us about bonding the town.

Q. Did you say to Geo. H. Strough, the same day you signed the petition, or within a few days after, while riding with him at or near Beach Ridge, that you had signed petition for bonding the town, or words to that effect?

(Objected to as incompetent and immaterial. Overruled.)

A. I did.

Q. Did you at the same time ask him to sign the petition to bond?

A. No, sir; Biddlecom had spoken to me several times before this about signing a petition for the road. One occasion was at Bushnell's store. There had been nothing said by him to me about bonding.

Redirect:

After signing petition, and before talking with Strough, I had learned that the paper I signed was the petition for bonding the town.

NELSON WALTS sworn.

Reside in Orleans. Biddlecom and Eddy called on me to sign petition. I met them at my brother's. They spoke of their business as about the railroad and bonding the town. I then refused to sign the paper. About an hour afterward they came to my house. Biddlecom said there was a meeting appointed that day at Stone Mills, to get men to go on and canvass the town for a railroad from Clayton to La
233 Fargeville, and through Stone Mills to Watertown; that he was in favor of having it go from Clayton to Theresa, and intersect the Utica & Carthage road, and if I was in favor of having the road go from Clayton to Theresa, instead of Stone Mills, to sign his paper, otherwise, not. He said there was no doubt the road would go one way or the other. I told him if it was a certain thing, or quite sure that the road would go one way or the other, I would sooner have it go by Theresa than through Stone Mills. I then signed the paper. I was opposed to bonding the town then; am now; would not have signed the paper if I had not been informed that the road would go one way or the other. I understood the effect of the petition would be to draw the road to Theresa instead of Stone Mills. If the road is sure to go one way or the other, then I want my name to stand on the petition; otherwise not. I signed paper G.

Cross-examination:

I am opposed to bonding on principle. I yielded my views because I preferred to sign rather than have a road go by Stone Mills. I understood that the paper was a petition for the appointment of commissioners to bond the town. I did not read it or hear it read. I understood M'r Biddlecom as expressing his opinion that the road would go one way or the other.

CHARLES WALTS sworn.

Reside in Orleans. M'r Biddlecom and Esq. Eddy presented the petition for me to sign (No. 1). Biddlecom wanted to know if I was in favor of bonding the town for a railroad from Clayton to Theresa. Told him I was not. He said that in his opinion they were going to hold a meeting at Stone Mills to organize and to draw the road that way
234 to Watertown. I asked him if he thought a road would be built. He said he did, one way or the other. I told him of two evils I would choose the least, and would rather the road would go through Shantyville, and I signed the petition. I signed paper G. M'r Bort read it to me. I am opposed to bonding the town for a railroad, but I assented to bond to have it go by Theresa rather than Stone Mills. I would not have signed except I had supposed the town would be bonded. If there is any project ahead to build a road to Stone Mills, if it can't be built by Theresa, then I want my name to stand on the petition; otherwise not.

NELSON WALTS recalled.

M'r Biddlecom merely expressed his opinion that there would be a meeting at Stone Mills to organize to canvass the town for a road through Stone Mills.

Contestants offer to prove that only one-half of the farm assessed to M'r's Barlow in 1870 was owned by her; that the other half was owned by her oldest son; both living upon and occupying the farm together.

(Objected to as immaterial and incompetent. Objection sustained. Exception.)

WILLIAM B. IRWIN sworn.

Reside about 1½ miles north of Stone Mills; attended all the railroad meetings held there last winter. (Obj.) I know of no organization to build a road through Stone Mills. I saw most of the people in that part of the town at those meetings.

Cross-examination:

I have heard of a project of a road through Stone Mills to Watertown.

235 Redirect:

First I heard of such a road was at the meeting at La Fargeville; last meeting there when Watertown people were there; it was then decided to build a road by La Fargeville; think this was in January; this was before any of the meetings at Stone Mills.

Contestants rest.

GEORGE H. STROUGH sworn.

Reside in Orleans; know Thomas Hogan; I rode with him in a sleigh in February last, same day of the last railroad meeting at Stone Mills, on Saturday, about the middle of February.

Q. Did Thomas Hogan say to you on that occasion that he had signed the petition to bond the town, or words to that effect?

(Objected to as immaterial and incompetent; also that Hogan himself says that he did. Objection sustained upon last grounds.)

Q. Did he at the same time request you to sign the petition for bonding the town?

(Objected to as incompetent and immaterial, collateral, and bound by Hogan's answer. Objection overruled. Exception.)

A. He did not directly ask me to sign the petition.

Recess till 2 p. m.

MERRICK PICKARD sworn.

Know Jeremiah Timmerman, and also Beardsley and Edmonds; was present when Timmerman signed petition at my house; heard what Beardsley spoke to him; he told Timmerman and me there was a railroad in contemplation, and he had a petition to bond the town
236 for $80,000, to run from Clayton to Theresa, to connect with the Philadelphia and Carthage road. I told him I was opposed to bonding the town, but was in favor of a road to Theresa rather than through Stone Mills, as it would be less expense; Timmerman said he was opposed to bonding.

Cross-examination:

I am a tax-payer of Orleans. They came to my house about 10th of February. Beardsley did most of the talking; he said there was a road proposed from Clayton to Theresa, and they had come to bond the town for $80,000, to build the road; I had heard that day that there was to be a meeting at Stone Mills to see about getting a road that way. They supposed that the town would be bonded anyway, and I signed the petition, knowing it was a petition to bond the town for $80,000 for a road from Clayton to Theresa. It was supposed that the town would be bonded for more than that amount if the road went the other way. As the matter now stands, I am in favor of bonding the town for the Clayton and Theresa Railroad. Timmerman was present all the time, and conversation was addressed to both of us; he could have heard all that I heard.

ROBERT T. JEROME sworn.

Know Biddlecom and Henry Dow; heard a conversation in Dow's barn-yard between Biddlecom and Dow. M'r Biddlecom asked him if he was willing to sign a petition for a railroad from Clayton to Theresa; Dow claimed he did not understand, and I called Dow's second son, about 18 to 20 years of age. M'r B. then said he was around to get signers to a petition to bond the town for $80,000 for a railroad from Clayton to Theresa. This was said to Dow and the boy. He told
237 the boy he wanted him to explain it to his father and mother, and that he would call again and see what they would do, and to talk it up with them, so he would not be hindered when he came again.

D. W. BEARDSLEY recalled.

Know Benj. Shimmel; procured his signature to petition in company with Edmonds; Edmonds and I drove into the yard; two or three young men stood outside; we asked for Shimmel, and one of them called him out. I told him Edmonds and myself were there to solicit names for a railroad from Clayton to Theresa, and to bond the town for $80,000. Shimmel said he was opposed to bonding. I told him others had expressed the same view, but had changed their minds. I told him the majority of the people of Clayton and Orleans were in favor of a railroad somewhere; many were in favor of a road through Stone Mills to Watertown; others, of a road to Theresa; he said if we had to bond the town for a road, he preferred to put his name to a paper bonding the town for a road to Theresa, as he thought it would by a better route and a better paying route. I told him most every one we had seen seemed to think and speak of the matter the same as he did; told him I thought the road could be built for much less money that way than by way of Stone Mills to Watertown. He said he had been opposed to bonding. I went on and stated parties that had signed in that vicinity; stated the Timmermans, Garlock, others. He said, "if they can sign it, I can." We went into the house, and I laid the petition on the table and he signed it. I did not state, in that conversation, they had secured sufficient stock to bond the town, and it would be bonded in 24 hours, and nothing to that effect; did not say we had secured enough to bond the town; did not
238 tell him the paper was merely to get an expression of the people as to the route, or anything of that kind; did not tell him the paper was not for bonding the town; neither of these statements was made by Edmonds. I told him I had learned that a meeting was to be held the Saturday following at Stone Mills, in reference to a railroad, and I had so learned; this was on Friday, February 10th; the next day, the 11th, the meeting was held, as I understand. I told him, if we procured names as rapidly as we had that day, I thought we could procure names enough and sufficient property to bond the town within twenty-four hours; had but one conversation with Shimmel, and that was in the presence of two or three persons; procured signature of M'r's Eva Jenkins on same day, Edmonds with me; first went to the mill and saw the boys; then went to the house and saw M'r's Jenkins; went into the house, and Edmonds introduced me to M'r's Jenkins, and said, "M'r's Jenkins, I am here on business, and I hardly know what; yes, I do too; we are here for the purpose of soliciting names for a railroad from Clayton to Theresa, and bonding the town for $80,000." She said she was near enough to a railroad already; had one at Evans Mills and another building at Theresa. Edmonds said the people of Clayton and Orleans were anxious for a railroad; some were in favor of building through Stone Mills to Watertown; others in favor of a road to Theresa.

She said, "I think we have railroad enough now, but if the town was to be bonded, she preferred a road running from Clayton to Theresa, and thought it would be a better-paying route; was already taxed enough, and it was all she could do to pay here taxes now; had no one to consult with. Edmonds said he thought it would enhance the value of her property, and that all she would have to pay would be the
239 tax upon these bonds for two or three years, till the road was completed. Said she would not sign till she had seen the boys, as they helped pay taxes. I carried her to the mill to see the boys. I know the fact that there were persons who desired the road through Stone Mills. She asked the boys what they thought about her putting her name to this bonding paper; one or both of the boys said, "Mother, you can do as you like; we can pay taxes if others can." One of the boys said if the road came by Theresa it would make their Theresa wood-land worth $75 per acre. One wanted to know who had signed the paper. I told them the names of several. One of the boys said, "Mother, you may as well sign; they will get the town bonded without you, and you will only be an odd one among them." We went back to the house and she signed the petition. Did not, nor did Edmonds, tell them that the town would be bonded any way, or any thing to that effect. At the mill did not say, in answer to a question from one of the boys, that the paper was not to bond the town; did not say it was merely to get the voice of the people as to location.

Know M'r's Elizabeth Hughes; procured her signature; Edmonds was with me; had a conversation with her at the time she speaks of; two of her sons were there and John Guest; told her I came there for the purpose of soliciting names to a petition for a railroad, and bonding the town for $80,000, from Clayton to Theresa. She said she was opposed to bonding, and had taxes enough to pay already. I told her a good share of the people of Clayton and Orleans were in favor of a railroad; some were in favor of running by Stone Mills to Watertown; others in favor of going to Theresa; told her it would cost much less for a road from Clayton to Theresa than to Watertown by way
240 of Stone Mills; then told her that the tax would be about one-third or a little over, and I thought it would enhance the value of her property more than that amount. I repeated a few of the names I had on the paper, and she then consented to sign, and did so. Edmonds heard the conversation. I did not, at any time, say to her that it was not a paper to bond the town, or that it was simply a paper to get a majority to secure a road by Orleans Corners. Guest did not ask whether the paper was to bond the town, and I answer, "No, it is already bonded."

Know Valentine Brightwiser. Edmonds with me; I said to Brightwiser, I was there for the purpose of soliciting names to bond the town of Orleans for $80,000 for a railroad from Clayton to Theresa; said he was opposed to bonding; told him others talked as he did, but had since changed their minds and signed; his wife said, "We have taxes enough to pay now." I said many of the people of Clayton and Orleans were bound to have a railroad; some in favor of running to Stone Mills and Watertown, and others in favor of running to Theresa. I had talked with many people in town, and knew the public sentiment; told him the Stone Mills people were anxious to have the road come that way. He said if he was to bond for a road, he would put his name to a paper to bond for a railroad to Theresa, because it would be handier for him; would be a better-paying route, and could be built for less money than by Stone Mills; then told of a number who had signed for the

road. He then said to his wife, she might put his name down. I told him I had understood that a railroad meeting was to be held at Stone Mills next day.

241 Procured Jeremiah Timmerman's signature to petition at Merrick Pickard's house. I told him we were there for the purpose of soliciting names for a railroad from Clayton to Theresa, and bonding the town for $80,000. Said he was not in favor of bonding; told him many others stood just as he did, but had changed their minds and signed petition; told him some were in favor of running by Stone Mills to Watertown, others in favor of running from Clayton to Theresa. My opinion was, a road to Theresa could be built much less than by way of Stone Mills to Watertown; better-paying and more feasible route. He said he thought so himself. Told him I had been informed that a meeting was to be held the next day at Stone Mills for the purpose of building a railroad. Said he did not want the town bonded for a road to run that way; if they were going to bond for a road, he would rather bond for a road from Clayton to Theresa than the other way. I did not, nor did Edmonds, say that the town would be bonded in twenty-four hours. Nothing was said to the effect that the paper was simply to ascertain how the people felt as to choice of road.

Know Marcel Simonet; procured his name to petition; had conversation with him near Wetterhorn's barn. M'r Guest was on the sleigh. Told him I was there to procure his name to a paper for bonding the town for $80,000 for a railroad from Clayton to Theresa. He said he was opposed to bonding; told him many people in Clayton and Orleans were in favor of a railroad; some were in favor of a road through Stone Mills; others from Clayton to Theresa. He said if he had to pay for a railroad, he would rather have it go from Clayton to Theresa; told him a meeting had been held at Stone Mills on Saturday—this was on Monday—and I had understood that several had signed a petition

242 to the effect that they were oppose. to bonding the town for a railroad unless it was by Stone Mills to Watertown. He then said he would sign. I referred to the resolution, a copy of which has been introduced in evidence here.

I know Mary Barlow, and was with Edmonds when her name was procured. I said to M'r's Barlow and her son that I was there to procure their names for a railroad running from Clayton to Theresa and bonding the town for $80,000; told them that the people of Clayton and Orleans were anxious for a road; some were in favor of running from Clayton to Theresa, and others through Stone Mills. It was said by her or her son that she was in favor of the road to Theresa; thought it would be a better-paying route, could be built for less money, and would give them a depot near by. Then there was a meeting, as I understood, to be held at Stone Mills the next day, favoring that route. They said they were not in favor of putting their names to paper for a road running that way. Edmonds said, "Mrs. Barlow, you had better put your name to the paper." Her daughter Hannah advised her mother to sign, and said they could pay their taxes if others could. She signed the petition. Tried to procure name of son Lyons, but could not. I took out a printed circular about bonding and left it with the son to look over. Did not tell them that the petition was for any other purpose except bonding; did not tell them that the town was in such a shape that it would be bonded. Other persons beside Edmonds and myself were engaged in getting names to petition for bonding, and at the time I procured their signatures I knew that a large number of names had been procured to petition. I know the people in town gen-

erally, and had conversed with them upon the subject of the road.
243 Meetings on the subject had been held at LaFargeville, Clayton, Theresa, and I think Stone Mills.

Cross-examination:

Think I have testified to all that I now remember of these conversations. I called the attention of the people to the signatures already obtained, to show them there was no exception upon the subject, and that their neighbors had joined in it to show them how the people felt about the subject. I attended one meeting at Clayton. Company was organized at the time *of* the Watertown delegation were present at LaFargeville. (Under obj.) At that meeting a resolution was adopted by a large majority in favor of Clayton and Theresa route. (Obj.) I did not understand that any organization had been effected for a railroad through Stone Mills. There was no understanding between Edmonds and myself as to whether or not the petition should be read to each person. I think I stated to every person whose name I procured that I was getting signatures to a petition from Clayton to Theresa. Seven miles from Lafargeville to Clayton, nine from Lafargeville to Theresa, and Philadelphia six miles from Theresa. I understood, before I went out, that the paper organizing the railroad company had been sent to Albany.

In detailing these various interviews, I have given the language used as near as I now recollect. They feared at M'r's Barlow's that we could turn this road by the way of Stone Mills. I told her no, not by signing this bonding paper; that it acted just the same as a remonstrance against building the road by the way of Stone Mills. I think I said to one or two that if we procured names enough to the petition there would be no chance for a road by way of Stone Mills.

244 Q. On finding some of these petitioners objecting to bonding the town, and some who could not understand English very well, why did you not read the paper so it could be fully understood?

A. Where they requested it to be read it was read. I was not aware that I had come across any person who did not fully understand it, or I should have read it to them.

Simonet understands common English used in conversation well, I think. I think old M'r's Barlow understood it well; her daughter talked to her and explained it. I exhibited the petition to each person.

HENRY B. EDMONDS sworn.

Resides in New Orleans. Was with Beardsley when he procured some signatures to the petition. Heard the railroad discussed by different persons. Know Benjamin Shimmel; was present when he procured the signature of Shimmel. Beardsley told him he had a petition to bond the town for $80,000 for a railroad from Clayton to Theresa. He said there had been talk about a road through Stone Mills to Watertown, and some of the people were anxious to have it that way. Nothing said, that I remember, about bonding in twenty-four hours; nothing that names had already been secured enough to bond the town. Nothing was said about this being a paper to express the views of people as to the route. Something said about taxes. Shimmel said he had taxes enough to pay now. It was not stated by Beardsley or myself that this was a paper not to bond the town.

Know M'r's Eva Jenkins; was with M'r Beardsley when he obtained her name. I told her we were soliciting names to build a railroad from Clayton to Theresa, and to bond the town for $80,000. She

245 said she would not sign it, was near enough to a railroad, and she had all she could do now to live and pay her taxes; said if M'r Jenkins was alive he might possibly take hold of it. Beardsley went with her to see her sons. She returned in about 15 minutes, and she then signed the paper.

Was present when M'r's Eliza Hughes was procured. Beardsley asked her how she felt about a railroad. She said she did not want any railroad. He said he had a petition there to secure a road from Clayton to Theresa, and bond the town for $80,000. She said she would not sign a petition for bonding the town. Beardsley said some of the people were anxious to have a road to some point, either Clayton to Theresa, or running through Stone Mills to Watertown. She said if there was a prospect of a road through the town any way, she preferred the Theresa route, as the cheapest. Heard no one say that the town would be bonded anyway. Did not hear Guest ask if the paper was for bonding the town and Beardsley say "No, the town had been bonded."

Know Valentine Brightwiser; was present. Beardsley said he had a petition to bond the town for $80,000 for a road from Clayton to Theresa, and wanted him to sign it. Brightwiser appeared to understand what was said to him. Nothing said about the petition being simply a choice of road.

Was present when Timmerman's name was procured. It was stated to Pickard and Timmerman that the petition was to bond the town for $80,000 for a road from Clayton to Theresa. I stated that I had been opposed to bonding the town, but had made up my *my* mind that a road would go through anyway, and was now in favor of bonding the town for the road from Clayton to Theresa.

246 Was present at M'r's Barlow's. It was stated that the paper was a petition for bonding the town for $80,000 for a road from Clayton to Theresa. It was stated that if they failed to get subscribers or stock enough to build their road, and the Watertown and Stone Mills people got ahead of them, her name would operate on the paper as a remonstrance against the Stone Mills route, and her name could not be used in favor of that route. It was not said that the paper was not for the purpose of bonding the town, or anything to that effect.

Cross-examination:

Am a farmer. Lived from one-half a mile to four miles from the person who sign*dd* petition (No. 4). Timmerman lived nearest to me. I had moved there the ninth day of last November. Beardsley and I were in conversation with Shimmel not over ten minutes; interview with M'r's Jenkins before they went to mill was not over ten minutes; interview with M'r's Hughes was perhaps ten or fifteen minutes.

Q. Have you a present recollection whether or not the man there said anything in that conversation?

A. I don't recollect that he did; I have not. Beardsley went into the house first; found M'r's Hughes, her two sons, and a man. Beardsley first spoke; the man Guest replied. Can't give the conversation there in the language in which it occurred; can't give precise language of whole conversation with M'r's Jenkins or Shimmel, or with any of them; can't tell what my motive was for saying to Timmerman that I had been opposed to bonding, but had made up my mind that a road would be built, or whether I had any motive; could not tell what was the conversation just before that, or what was said just after.

247 We were there ten or fifteen minutes. Hannah Barlow participated in the conversation at her mother's. She talked with her

mother before she signed the petition. Cannot remember all that was said by Hannah to her mother, or the precise language used by her. Don't remember that she asked any question.

DANIEL EDDY sworn.

Was present at the time of obtaining the name of William Mahana to the petition. Biddlecom and I went to M.'s. Biddlecom told him we were around getting signatures to bond the town for a road from Clayton to Theresa. Mahana said he was opposed to bonding. The amount, $80,000, was stated. Biddlecom told him of the advantages to him of the road—increase of valuation of property. Biddlecom asked him about his taxes, and figured out and told him what his tax would be on the whole amount, and how much it would be per year; told him how he would give him his bond for $500 that it should not be any more. Mahanna said they had agreed together at that end of the town not to sign to bond the town. Biddlecom said several of his neighbors had signed, and told him who they were. Mahana said they were fools; that they had agreed not to sign. He then signed. Think his son Cornelius signed his name by his direction. Nothing was said by Biddlecom that the paper was not a petition for bonding, or that he would pay $500 if his signing held him to bonding the town.

Was present when signature of Phillip Zimmer was obtained. We found him in the evening, at his house. Biddlecom said he wanted him to sign a petition to bond the town for $80,000 for a road from
248 Clayton to Theresa. He said he would like to have the road, but was not in favor of bonding the town. Biddlecom told him the advantages of the road, and that he thought his farm would be worth $75 per acre. Biddlecom asked him what his tax was the year before, and figured out what his share would be of the tax. Biddlecom read the petition to him; read it very distinctly, and took pains to make Zimmer understand. Zimmer then signed it. Zimmer and his wife and daughter were present, one daughter nearly a woman grown. Zimmer said nothing that indicated that he did not understand what was said. Zimmer did not ask the question, "Is that to bond the town," and I say, "O no, Philip." Nothing of that kind was said. Zimmer was complaining that the road would never pay; I told him if I thought so I would not have signed, for I did not want to pay taxes any more than he did. When he sat down to the table and took the pen in his hand, his wife said in substance that he would find out when the taxes came. I said, "Yes, Philip, you will find out when the taxes come that there will be something to pay." This was before signing. He then signed the petition.

Cross-examination:

I saw him a few days after. (Obj.) He said we had deceived him, and wanted his name taken off. I told him I thought he understood it, and M'r Biddlecom had gone away, and I did not believe he would take his name off.

Adjourned to 9 a. m., June 9.

JUNE 9, 1871—9.30 a. m.

R. B. BIDDLECOM sworn.

Procured the name of Philip Zimmer to the petition. Daniel
249 Eddy was with me. The last of February. Had but one interview with him. I said to Zimmer that I called to obtain his signature to a petition for bonding the town for the Clayton & Theresa

Railroad for $80,000. He said he did not want to sign a petition to bond the town. Said to him that a railroad would increase the value of his farm, and I presumed it would be worth $75 an acre at least; competition in the roads would diminish the price of freight on his produce to market. I had the assessment-roll with me, and stated to him, "The amount of your extra tax, if we build the road, would be about one-third increase over last year's tax." He said it was no such thing; it would cost him a great deal more. I then stated to him, if he was called upon to pay his full share of the $80,000, what it would be. He was surprised, and said it would be thousands instead of hundreds. I said to M'r Zimmer that I would take the amount of money from him, or his note on interest, and give him my bond that he should not be required to pay any more than that, and that I would see to the payment of his tax on account of the bonding upon the same assessment forever after. I then explained to him that the interest on his note would be sufficient to pay the tax for thirty years, and that at the end his note would then pay his share of the bond. He said, "Me no give note," and then said, "I will sign." We had talked of capital stock and the $1,000 per mile that had been obtained by subscription. He was afraid that he would sign to the capital stock of the company. Before then, at his request, I had read the whole petition to him, slowly and distinctly. He got ready to write his name, and then said, "Do I sign to pay?" His wife answered him in German. M'r Eddy said, "Yes, Philip; you will pay the tax when it comes," or something of the kind.

We were at Zimmer's an hour or hour and half. Zimmer is about
250 fifty-six years of age. His wife was there; heard the conversation and participated in it. There was nothing said by any one to the effect that that paper was not to bond the town. Zimmer did not ask such question and Eddy answered "No." He did not say "if the paper was to bond the town, he would not sign it."

I obtained the name of George Dow. Nelson Goodrich was with me. I told M'r Dow that the payment of his share of the tax would not be more than $11 per year; that he would be required to pay this until the road was completed, so that it would pay a dividend; told him we could complete the road in two years, if we had the money; if a dividend of 7 per cent. was made, that would pay interest on the bonds, and that as long as the road paid that dividend, he would have no tax to pay; that if the road through the town should be assessed at $50,000, and the rate be 3 per cent., the tax on the road would be $1,500 per year; that $1,500 per year received for thirty years and put out at interest every year would amount to $90,000, and if the bonds all came due at that time there would be abundance to pay them, and in that case we should have nothing to pay on the bonds. I figured this up with M'r Dow and showed it to him.

Obtained Henry Dow's signature. It was among the last names procured; think about 1st May. Before this I had two or three conversations with him. I had conversation with him at my office, and M'r Jerome and I had talk with him at his barn-yard about 1st February; explained the advantages of the road and stated to him and his boy my figuring and requested them to talk it over with their mother. After this I saw him at my office and figured with him there at my table. He said he would not sign the paper there, but wanted his wife to
251 know, and I said I would call and see him and his wife and son.

Last of April or 1st May after, I called upon M'r Dow at his house; told him I had. I had called to get him to sign for bonding the town for that railroad. His son was present; and he went into the

house; this was after dinner—about 1.30 or 2 p. m. His wife and son were present. I told them all distinctly that the paper was for bonding the town for $80,000 to build the road; said he did not like to be taxed, and so did his wife; sat by his side and figured very slowly, stating to them the amount of tax it would be to him or cost him yearly for the payment of their interest.

He or his wife said it would be a large amount more (for dollars they got hundreds that it would cost them). I told them our whole tax in town that year was about $16,500; the interest on the bonds I computed and told them it would be $5,600. I said we would call it $5,500—near enough for our purpose; told them they would see their tax would be about one-third more. M'r Dow said I see or I understand that so. I then said to them that their share of the $80,000, if required to pay now, would not exceed $300. They expressed surprise at that, saying it would cost them $2,000 or $3,000. I told them they would have to pay 16 per cent. on their assessment as their share of the $80,000. I took their assessment and multiplied it by 16, explained that this made the 16 per cent., and I think it amounted to about $280. One of them said if it did not cost any more than that they wanted the road. I assured them if the whole amount was paid them it would not be more that $300. I said to M'r Dow, you may pay me $300 or give me your note with interest payable annually, and I would secure him for whatever he would have to pay on that assessment for the road. The conversation was upon some other subject for a few moments, and I then
252 said I wanted them to decide. M'r's Dow talked with her husband in German, and M'r's Dow then said her husband would sign. I gave him the paper and he signed. Before talking with husband, M'r's Dow had said she was willing her husband should sign.

Nothing was said about the $300 being payable in three years, or that he could pay his whole tax in three years.

I obtained the signature of William Mahaney; heard his testimony yesterday. I told Mahany we had come to get his signature to bond the town for a road from Clayton to Theresa. He said I won't do it. I said to him that in all probability the town would be bonded, that the people of Clayton and LaFargeville were determined to have a road, and that if we could not get one that way, we should try to get one through Stone Mills. He said we have concluded around here not to sign to bond the town. I told him his neighbors think differently, and told him the names of a number who had signed. He said they were fools. I told him I presumed they had signed for fear they would get a railroad through Stone Mills. He talked with his son aside a little while and then said to me I might sign his name. I told him I preferred not, but would rather have his signature. The son came forward and signed his name by his direction. I said nothing to the effect that if that paper was to bond the town I would pay him $500; said nothing to the effect that that paper was not to bond the town.

I procured Hagan's signature to petition. Had several conversations with him upon the subject before he signed the petition, think three, upon the subject of the railroad and bonding. At the time of signing but little was said. First conversation was about taking stock
253 in the road; the second was also, if I had three. The last conversation before the final one was at my office in the evening. Robert T. Jerome was present there; I think was on the evening of the meeting at LaFargeville when organization was effected, or the evening after.

Railroad for $80,000. He said he did not want to sign a petition to bond the town. Said to him that a railroad would increase the value of his farm, and I presumed it would be worth $75 an acre at least; competition in the roads would diminish the price of freight on his produce to market. I had the assessment-roll with me, and stated to him, "The amount of your extra tax, if we build the road, would be about one-third increase over last year's tax." He said it was no such thing; it would cost him a great deal more. I then stated to him, if he was called upon to pay his full share of the $80,000, what it would be. He was surprised, and said it would be thousands instead of hundreds. I said to M'r Zimmer that I would take the amount of money from him, or his note on interest, and give him my bond that he should not be required to pay any more than that, and that I would see to the payment of his tax on account of the bonding upon the same assessment forever after. I then explained to him that the interest on his note would be sufficient to pay the tax for thirty years, and that at the end his note would then pay his share of the bond. He said, "Me no give note," and then said, "I will sign." We had talked of capital stock and the $1,000 per mile that had been obtained by subscription. He was afraid that he would sign to the capital stock of the company. Before then, at his request, I had read the whole petition to him, slowly and distinctly. He got ready to write his name, and then said, "Do I sign to pay?" His wife answered him in German. M'r Eddy said, "Yes, Philip; you will pay the tax when it comes," or something of the kind.

We were at Zimmer's an hour or hour and half. Zimmer is about
250 fifty-six years of age. His wife was there; heard the conversation and participated in it. There was nothing said by any one to the effect that that paper was not to bond the town. Zimmer did not ask such question and Eddy answered "No." He did not say "if the paper was to bond the town, he would not sign it."

I obtained the name of George Dow. Nelson Goodrich was with me. I told M'r Dow that the payment of his share of the tax would not be more than $11 per year; that he would be required to pay this until the road was completed, so that it would pay a dividend; told him we could complete the road in two years, if we had the money; if a dividend of 7 per cent. was made, that would pay interest on the bonds, and that as long as the road paid that dividend, he would have no tax to pay; that if the road through the town should be assessed at $50,000, and the rate be 3 per cent., the tax on the road would be $1,500 per year; that $1,500 per year received for thirty years and put out at interest every year would amount to $90,000, and if the bonds all came due at that time there would be abundance to pay them, and in that case we should have nothing to pay on the bonds. I figured this up with M'r Dow and showed it to him.

Obtained Henry Dow's signature. It was among the last names procured; think about 1st May. Before this I had two or three conversations with him. I had conversation with him at my office, and M'r Jerome and I had talk with him at his barn-yard about 1st February; explained the advantages of the road and stated to him and his boy my figuring and requested them to talk it over with their mother. After this I saw him at my office and figured with him there at my table. He

said he would not sign the paper there, but wanted his wife to
251 know, and I said I would call and see him and his wife and son.

Last of April or 1st May after, I called upon M'r Dow at his house; told him I had. I had called to get him to sign for bonding the town for that railroad. His son was present; and he went into the

house; this was after dinner—about 1.30 or 2 p. m. His wife and son were present. I told them all distinctly that the paper was for bonding the town for $80,000 to build the road; said he did not like to be taxed, and so did his wife; sat by his side and figured very slowly, stating to them the amount of tax it would be to him or cost him yearly for the payment of their interest.

He or his wife said it would be a large amount more (for dollars they got hundreds that it would cost them). I told them our whole tax in town that year was about $16,500; the interest on the bonds I computed and told them it would be $5,600. I said we would call it $5,500—near enough for our purpose; told them they would see their tax would be about one-third more. M'r Dow said I see or I understand that so. I then said to them that their share of the $80,000, if required to pay now, would not exceed $300. They expressed surprise at that, saying it would cost them $2,000 or $3,000. I told them they would have to pay 16 per cent. on their assessment as their share of the $80,000. I took their assessment and multiplied it by 16, explained that this made the 16 per cent., and I think it amounted to about $280. One of them said if it did not cost any more than that they wanted the road. I assured them if the whole amount was paid them it would not be more that $300. I said to M'r Dow, you may pay me $300 or give me your note with interest payable annually, and I would secure him for whatever he would have to pay on that assessment for the road. The conversation was upon some other subject for a few moments, and I then
252 said I wanted them to decide. M'r's Dow talked with her husband in German, and M'r's Dow then said her husband would sign. I gave him the paper and he signed. Before talking with husband, M'r's Dow had said she was willing her husband should sign.

Nothing was said about the $300 being payable in three years, or that he could pay his whole tax in three years.

I obtained the signature of William Mahaney; heard his testimony yesterday. I told Mahany we had come to get his signature to bond the town for a road from Clayton to Theresa. He said I won't do it. I said to him that in all probability the town would be bonded, that the people of Clayton and LaFargeville were determined to have a road, and that if we could not get one that way, we should try to get one through Stone Mills. He said we have concluded around here not to sign to bond the town. I told him his neighbors think differently, and told him the names of a number who had signed. He said they were fools. I told him I presumed they had signed for fear they would get a railroad through Stone Mills. He talked with his son aside a little while and then said to me I might sign his name. I told him I preferred not, but would rather have his signature. The son came forward and signed his name by his direction. I said nothing to the effect that if that paper was to bond the town I would pay him $500; said nothing to the effect that that paper was not to bond the town.

I procured Hagan's signature to petition. Had several conversations with him upon the subject before he signed the petition, think three, upon the subject of the railroad and bonding. At the time of signing but little was said. First conversation was about taking stock
253 in the road; the second was also, if I had three. The last conversation before the final one was at my office in the evening. Robert T. Jerome was present there; I think was on the evening of the meeting at LaFargeville when organization was effected, or the evening after.

Three or four days after I commenced circulating the petition for bonding; worked in La Fargeville and got a page of names. Had just been in Bushnell's store and obtained his signature. Saw Hagan with his team across the road; went over and said to him, "I want you to sign this petition to bond the town for $80,000 to build the road to Theresa." Hagan said, "All right; I will sign it when I come up again." I said, "M'r Hagan, I can't follow or watch you; I want you to sign now; you are as much interested in this matter as I am." He said he could not leave his horses. I asked some one to hold his horses, and then said to Hagan, "Come right over to the store and sign." He did so. There was nothing said by me that the petition was simply to fix the location of the road by Theresa.

After obtaining the signature of Sourwine, I obtained the signatures of tax-payers representing, including Sourwine's assessment, $13,290, being the names of tax-payers following Sourwine, names on petition No. 2. On petition No. 5 there may have been obtained the names of Samuel Gibbons, Cle. Scholenberg and Matthew Haunat, representing $2,665, and perhaps also Ham'l Brook on petition 7, representing $100. No other tax-payers were procured after Sourwine.

Zimmer and the two Dows are Germans and speak broken English. Henry Dow's wife speaks good English. He does not speak as well as the others. Spent about an hour and a half with Zimmer and
254 Henry and about three hours with George. Made no minutes in writing of the conversation with any one petitioner. Commenced circulating petition, I think, on the 9th February Procured a number of names at La Fargeville immediately, and a majority of all before the 21st. (Objected.)

At a public meeting Saturday after town meeting at La Fargeville, a meeting called to oppose bonding, I stated in the course of my remarks that the town was already bonded, or that a majority of names had been obtained in favor of bonding. I then thought that names enough had been obtained. I afterwards learned that I was mistaken and corrected it, and stated that I was in error; obtained three or four names that day and quite a large number came to me that day and said that they would sign at another time.

I will make a schedule of all the persons who were procured to sign the petition after this meeting, marked "L."

For the first twenty days of February I was engaged all the time on business for the railroad, procuring subscriptions to stock and signatures to the petition. I went through with those figures with the majority of them I procured to sign the petition and stated that the addition to last year's tax would be about one-third; it would be a little over one-third. I did not state the amount for the increased cost of collection. I told them it would be a little over one-third.

Procured a number of the subscriptions to the stock (under objection); 10 per cent. upon the subscription has been paid upon the stock subscribed in money. In my town it has been paid to me. In Clayton to Barker. It is now in my hands. I received it by direction of the board of directors. (Objected.) Zimmer and Benj. Shimmel were at the indignation meeting and applied to have their names taken of'.
255 The statement that I made to each was that the paper was a petition to bond the town for $80,000 for a railroad from Clayton to Theresa.

Proofs closed.

To be submitted on points on Saturday, June 17, at 2 p. m., at court house.

June 27th, 10 a. m., without fail.

JUNE 27—10 a. m.

M'r Lansing, for contestants, asks to have the case reopened and to give further testimony upon the question of fraud, and read affidavit of William B. Irwin, marked "M."

Application denied. Exception.

Jacob A. Klock representing $1,550, Levi Klock, $750, and Michael Fults, $1,390, severally appear, and Jacob A. Klock and Levi Klock ask to have their names stricken from the petition, and Michael Fults asks to have his name retained upon petition.

Application to strike off denied.

SCHEDULE B.

COUNTY OF JEFFERSON,
Town of Orleans, ss:

We do severally certify that we have set down in the above assessment roll all the real estate situate in the town of Orleans in said county according to our best information, and that with the exception of those cases in which the value of the real estate has been sworn to by
256 the possessor thereof, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor. And also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in said roll over and above the amounts of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and that with the exception of those cases in which the value of such personal estate has been sworn to by the owner or possessor, we have estimated the same according to our best information and belief, and to do justice to our town.

NATHAN HOLLOWAY,
HENRY B. EDMONDS,
JOSEPH WILDER,
Assessors.

Dated at La Fargeville this 15th day of August, 1870.

WAYLAND F. FORD,
Notary Public.

SCHEDULE C.

ORLEANS.

Names appearing on—

Assessment roll.	Petition.
Bardin, George	George Barden
Balts, George	George Balts
Brestch, Lawrence	Lawrence Bretsch
Bretch, John	John Bretsch
Barden, Volney	Voiney Barden
Barrows, O. D. widow	Julia Barrows, widow O. D.
Bushnell, Clark	Clark B. Bushnell
Bedel, Edgar	Edgar W. Bedell
Bushnell, Jerome	J. Bushnell

	Beardsley Brothers	D. W. Bearsdley, A. B. Beardsley
	Bushnell, George & Miller	George Bushnell, Peter Miller
257	Balts, Andrew J.	A. J. Baltz
	Balts, widow, Elizabeth	Elizabeth Baltz
	Balts, George	G. F. Baltz
	Balts, Andrew	Andrew Balz
	Cole, Isabel	Isabel L. Cole
	Coffeen, William H.	W'm H. Coffeen
	Dewey, Addice E.	A. E. Dewey
	Dewey & Stephens	H. M. Stephens, A. E. Dewey
	Dewey & Brown	Eleazor Dewey, Belcher A. Brown
	Dubois, Sairah	Sarah V. Dubois
	Eichhorn, Barbary	Barbara Eichorn
	Evans, Clarissy	Clarissa Evans
	Ellis, Halsey	Halsey A. Ellis
	Foot, Perley	Perley K. Foot
	Ford, Waylaud	Wayland F. Ford
	Gillick & McCormick	Peter Gillick, Michael his x mark McCormick
	Gordon, Hollis	Hollis Gordon
	Greenleaf, George	George Greenleaf
	Guysler, John	John Geissler
	Gray, Samuel	Sam. Gray
	Giegerich, John	John Geigerich
	Gates, Roswell W.	R. W. Gates
	Gates, Samuel W.	S. W. Gates
	Harris & Whaley	W'm Whaley, Samuel Harris
	Hial, George	George Heyl
	Hews, Patrick & Michael	Patrick J. Hughes, Michael J. Hughes
	Jerome, Truman	Robert T. Jerome or Truman Jerome, as on ass. roll
	Jeffers, Irwin	Erwin Jeffers
	Jennings, George W.	Geo. W. Jennings
	Knight, William	W'm M. Knight
	Loucks, Zenas and Romain	Zenas A. Loucks, Romain Loucks
	Loucks, Zenas	Zenas A. Loucks
	Mayer, Valentine	Valentine Mayers
	Mayers, George	George Mayer
	Oriley, Franklin	Francis O. Riley
	Pelger, George	George Pilger
	Priest, Samuel D.	S. D. Priest
	Robinson, Walter	Walter Robinson
	Ramsdell, M'r's Ledsmar	M'r's Ledsmar Ramsdell
	Richardson, Sarah	Sarah A. Richardson
	Resch, Philip	Phillip Resh
	Sheeley & Carter	W. W. Sheley, Waitstill Carter
	Snyder, John H.	J. H. Snyder
	Schoville, George B.	G. B. Scovill
	Stephens, H. M.	H. M. Stephens
	Strough, B. J.	Byron J. Strough
	Snell, Alanson	Lansing Snell
	Sargent, Fileny	Philaney Sargent
	Sargent, Simeon	S. W. Sargent
	Sargent, Clark	Clark W. Sargent
	Smith, Rufus	R. C. Smith

Scram, M'r's Walter	Ruth Schram
Sowerwine, George	George Sourwine
Tanner, M. S.	Melvin S. Tanner
Taylor, James A.	J. A. Taylor
Tarbel, E. E.	E. E. Tarbell
Tallman, M'r's Louise	Louisa Tallman
Tarbel, Widow	Aurila M. Tarbell
258 Timmerman, George F.	G. F. Timerman
Vanconett, George	George W. Vancoughnet
Vanconett, N. W.	N. W. Vancoughnet
Waltz, & Ellis	Nichols Walts, Halsey Ellis
Wilder, David, widow	M'r's David Wilder
Whaley, William	W'm Whaley
Rood, Charles	C. P. Rood
Door, Henry	G. H. Door

Biddlecom indentifies above.

Names as appearing on—

Assessment roll.	Petition.
Banter, John	John H. Banter
Bergan, Oliver S.	O. S. Burgan
Dennis, F. & A.	A. W. Dennis, F. W. Dennis
Garner, Walter	W. C. Garner
Holloway & Keech	Nathan Holloway, John Keech
Joels, William	William Joles
Prime, Levi*	Levi his x mark Prime
Patterson, Franklin	F. Patterson
Pierce, Aneil	Esther Mercy
Reed, Spencer D.	S. D. Reed
Sholenbergh, Charles	Ch. Schollenberg
Smith, William	W. C. Smith
Spaulsbury, James & Albart	A. J. Spaulsbury, Albert Spaulsbery
Wilney, Merrick	William M. Wiley
Bowen, Asa*	Asa his x mark Bowen
Nunn, William U.	W. U. Nunn
Lefiner, Henry	Henry Lefleur
Robbins, Eldridge	Eldridge G. Robins
Waggoner, Jacob A.	J. A. Waggoner
Fuller, Sydney	S. F. Fuller

Nathan Holloway to identify above.

Names appearing on—

Petition.	Assessment roll.
W'm R. Larabee	Larabee, William
John Furst	First, John
Sophia E. Graham	Graham, Sophia
W. S. Lewis	Lewis, William
M'r's J. E. Lewis	Louis, M'r's William
Polly Gardner	Gardner, M'r's Eben
H. F. Timerman, George H. Timerman, G. C. Timerman	Timmerman, H. F. & C.

*Witness.

A. M. Loucks	Loucks, Andrew M.
E. Timerman	Timmerman, Ephraim
259 Valentine Brightweazer	Brightwisser, Valentine
Elizabeth Hughes	Hughes, M'r's Elizabeth
Benjamin Shimmell	Shimmel, Benjamin
M'r's Eve Jenkins	Jenkins, M'r's Jacob
Courad his x mark Shimmell	Shimmel, Coonrad
M'r's Mary her x mark Barlon	Barlon, Widow
J. N. Beardsley	Beardsley, John N.
Macel Simonet	Simonett, Marcel
M'r's A. Hughes	Hughs, Ann
Margret Gabler	Gabler, Widow
Warren R. Smith	Smith, Warren

R. D. Biddlecom, witness, to explain differences in spelling or identify.

SCHEDULE D.

June 5, 1871.—A. H. S.

ASSESSMENT ROLL.		NAMES OF PETITIONERS.	
1. Arnold, Mrs. Solon	60	1. Mrs. Solon Arnold	60
2. Aldridge, David A	670	2. David A. Aldrich	670
3. Beaubier, William	30		
4. Britton, George S	130		
5. Bardin, George	1,500	3. George Barden	1,500
6. Balts, George	800	4. George Baltz	800
7. Bauter, John	165	5. John H. Bauter	165
8. Brooks, Hamilton	100	6. Hamilton Brooks	100
9. Britton, Otis N	420	7. Otis N. Britton	420
10. Brown, Merrick	100		
11. Beckwith, Elijah	3,000		
12. Barrows, John S	700	8. John S. Barrows	700
13. Biddlecom, R. B	2,270	9. R. B. Biddlecom	2,270
14. Brestch, Lawrence	1,300	10. Lawrence Bretsch	1,300
15. Bergen, Oliver S	210	11. O. S. Burgen	310
16. Bretch, John	1,725	12. John Bretsch	1,725
17. Bardin, Volney	480	13. Volney Barden	480
18. Barrows, O. D., widow	315	14. Julia Barrows, widow, O. D.	315
19. Baxter, Valda	125	15. Valda Baxter	125
20. Bushnell, Clark	400	16. Clark B. Bushnell	400
21. Bushnell, Phillip	165	17. Phillip Bushnell	165
22. Bedel, Edgar	260	18. Edgar W. Bedel	260
23. Barden, R. D	520	19. R. D. Barden	520
24. Bushnell, Jerome	120	20. J. Bushnell	120
25. Beardsley, John N	700	21. J. N. Beardsley	700
		22. D. W. Beardsley	
26. Beardsley Brothers	250	23. A. B. Beardsley, on ass. roll Beardeley Bros	250
27. Brightwesser, Valentine	2,745	24. Valentine Brightwisser	2,745
28. Bauter, Nelson	740	25. Nelson Bauter	740
29. Baxter, Albert	90	26. Albert Baxter	90
30. Bott, Frederick	465	27. Frederick Bott	465
31. Bushnell, George & Miller	1,900	28. George Bushnell & Peter Miller	1,900
32. Bushnell, George	60	29. George Bushnell	60
260 33. Bents, Gotlep	2,220		
34. Barlow, Widow	1,200	30. Mrs. Mary Barlow	1,200
35. Barlow, Lyons	1,275		
36. Booth, Catharine	320	31. Catharine Booth	320
37. Baldwin, Charles	2,260		
38. Boardman, Eleazor	370		
39. Baldwin, Lorenzo	1,600		
40. Balts, Andrew J	470	32. A. J. Baltz	470

41. Brown, Elon G	1,100			
42. Baldwin, Andrew	100			
43. Bort, Cornelius	3,765			
44. Bauter, Mrs. James	550			
45. Bauter, Mrs. Mary	725			
46. Budlong, Gideon	5,065			
47. Balts, Widow Elizabeth	2,600	33. Elizabeth Baltz	2,600	
48. Balts, George	80	34. G. F. Baltz	80	
49. Balts, Andrew	1,300	35. Andrew Baltz	1,300	
50. Collins, E. S	130			
51. Caris, William	25			
52. Collins, Daniel	200			
53. Collins, John W	620			
54. Case, Alphonzo	500	36. Alphonzo Case	500	
55. Carter, Byron	300	37. Byron Carter	300	
56. Coon, Elias	2,350			
57. Collins, Joseph	1,200			
58. Calvin, D. C	600			
59. Carlos, Lewis	220			
60. Cole, Isabel	50	38. Isabel L. Cole	50	
61. Cole, Margaret	120	39. Margaret Cole	120	
62. Coffeen, William H	700	40. William H. Coffeen	700	
63. Cranker, Mrs. Louisa	60	41. Mrs. Louisa (her X mark) Cranker	60	
64. Casler, Joseph	1,060	42. Joseph Casler	1,060	
65. Church, Alonzo	400	43. Alonzo Church	400	
66. Collins, William	300			
67. Countryman, Mrs. Adam	100			
68. Countryman, John A	430			
69. Collins, James L	3,750			
70. Collins, Wm., j'r	Dog			
71. Carpenter, Stephen D	250			
72. Coventry, John	Dog			
73. Dewey, Addice E	210	44. A. E. Dewey	220	
Dewey & Stephens	1,250	H. M. Stevens, A. E. Dewey	1,250	
74. Dewey, Eleazor	100	46. Eleazor Dewey	100	
75. Delay, Robert	530	47. Robert (his X mark) Delay	530	
76. Dorr, George	1,070	48. George Dorr	1,070	
77. Dewey, Hiram	1,520			
78 & 79. Dennis, T. & A	1,050	49 & 50. A. W. Dennis, T. W. Dennis	1,050	
80. Drake, Hannah	230			
81. Delaney, John	50	51. John Delany	50	
82. Dewey, D. J	1,145	52. D. J. Dewey	1,145	
83. Dickenson, Rodolphus	649			
84. Dubois, Sairah	240	53. Sarah V. Dubois	240	
85. Dorr, Henry	1,775	54. Henry Dorr	1,775	
86. Dorr, George	Dog	55. George Dorr		
87. Dodge, Hiram	1,750	56. Hiram Dodge	1,750	
88. Dingman, Lewis, Mrs	220			
89. Dixon, Widow	150			
90. Dorr, John	3,100	57. John Dorr	3,100	
91. Dederich, Valentine	160			
261 92. Dean, Leonard	375			
93. Deen, William	960			
94. Deen, Plinny	2,800			
95. Dillenback, Andrew J	2,860			
96. Dodge, Perry	Dog			
97. Dillenback, William	30			
98. Diepolder, Mrs. Saloma	Dog			
Dean, Hughes & Neilis	400			
Dewey & Halloway	30			
99. Eichhorn, Barbara	1,060	58. Barbara Eichhorn	1,060	
100. Evans, Clarissy	3,060	59. Clarissa Evans	3,060	
101. Ellis, Halsey	700	60. Halsey A. Ellis	700	
102. Eddy, Asa	800			
103. Ellis, Halsey	95	61. Halsey Ellis	95	
104. Eddy, Daniel	1,665	62. Daniel Eddy	1,665	
105. Edmonds, B. D	1,700	63. B. D. Edmonds	1,750	
106. Eckert, George	2,700	64. George Eckert	2,700	

107.	Everett, Brainard	3,250		
108.	Eshbacker, Rosina	1,500	65. Rosina Eshbacker	1,500
109.	Dewey & Brown	1,100	45. Eleazor Dewey, Belcher A. Brown, Dewey & Brown on ass. roll	1,100
110.	Frost, Orra	50		
111.	Fish, Stephen	1,060		
112.	Flick, Frederick	4,000		
113.	Frank, Peter	300		
114.	First, John	1,055	66. John Furst	1,055
115.	Foot, Perley	3,700	67. Perley K. Foot	3,700
116.	Flamsburgh, T. D	130	68. T. D. Flamsburgh	130
117.	Fredenburgh, Jane	200	69. Jane Fredenburgh	200
118.	Foot, John	350	70. John Foot	350
119.	Ford, L. T	3,945	71. L. T. Ford	3,945
120.	Ford, Wayland	670	72. Wayland F. Ford	670
121.	Fox, William	1,000	73. William Fox	1,000
122.	Foot, Adam	3,360	74. Adam Fort	3,360
123.	Fults, Joseph	5,960	75. Joseph Fults	5,060
124.	Ford, Alexander	1,360	76. Alex. Ford, sen	1,360
125.	Fults, David	690	77. David Fults	690
126.	Fults, Michael	1,390	78. Michael Fults	1,390
127.	Freeman, Francis	1,930		
128.	Fults, Simon	8,500	79. Simon Fults	8,500
129.	Gould, George W	1,140	80. George W. Gould	1,140
130.	Goodrich, Nelson	1,160	81. Nelson Goodrich	1,160
131.	Gillick, Peter	900	82. Peter Gilleck	900
132.	Garner, Benjamin	565	83. Benjamin Garner	565
133.	Gelleck, Patrick	1,830	84. Patrick Gillick	1,830
134.	Gebbins, Samuel	375	85. Samuel Gebbins	375
135.	Gurnee, Ralph	520		
136.	Garner, Walter	800	86. W. C. Garner	800
137.	Gardner, Putnam	1,490	87. Putman Gerdner	1,490
	Gillick & McCormick	150	Peter Gillick & Michael (his X mark) McCormick, representing Gillick & McCormick on ass. roll	150
138.	Gordin, Hollis	400	88. Hollis Gordon	400
139.	Greenleaf, George	Dog	89. George D. Greenleaf	
140.	Gardner, Mrs. Eben	60	90. Polly Gardner	60
141.	Getman, Elias	445	91. Elias Getman	445
142.	Guysler, John	110	92. John Geissler	110
	143. Gabler, Widow	80	93. Margaret Gabler	80
262	144. Gordon, David	550	94. David Gordon	650
	145. Gillet, Burlin	Dog		
146.	Graham, Sophia	1,050	95. Sophia E. Graham	1,050
147.	Gray, Samuel	1,840	96. Samuel Gray	1,840
148.	Garlock, Horace	865	97. Horace Garlock	865
149.	Garlock, Abram	1,505	98. Abram Garlock	1,505
150.	Gray, Adam	1,330	99. Adam Gray	1,330
151.	Garlock, Levi	420	100. Levi Garlock	420
152.	Gaily, Daniel	115		
153.	Geigarick, John	165	101. John Geigerick	165
154.	Green, Sylvester	1,150		
155.	Grayham, D. C	3,000		
156.	Gillett, Charles	8,000		
157.	Gaily, John	3,900		
158.	Gates, Roswell W	800	102. R. W. Gates	800
159.	Gregor, John	Dog		
160.	Gates, Samuel W	4,070	103. S. W. Gates	4,070
161.	Hayes, William	225		
162.	Hoover, Emeline	50	104. Emeline Hoover	50
163.	Hannahs, Matthew	1,160	105. Matthew Hannahs	1,160
164.	Hawn, Daniel C	660	106. Daniel C. Hawn	660
565.	Hardy, John C	830		
	Halloway & Keech	75	Nathan Halloway, John Keech	75
166.	Hagan, Thomas	1,900	107. Thomas Hagan	1,900
167.	Hildreth, Roswell	550	108. Roswell Hildreth	550
168.	Hill, W. C	720	109. W. C. Hill	720
169.	Halloway, Nathan	2,500	110. Nathan Halloway	2,500

170. Hunter, John	40	111. John (his X mark) Hunter	40
171. Hawes, G. W	125	112. G. W. Hawes	125
172. Hose, M'r's William	615	113. M'r's William Hose	615
173. Harris & Whaley	2,325	114. W'm Whaley, Samuel Harris,	2,325
174. Hagan & Barlow	3,960		
175. Hagan, John	385		
176. Hughes, M'r's Elizabeth	2,500	115. Elizabeth Hughes	2,500
177. Herbrecht, Anthony	1,000	116. Anthony Herbrecht	1,000
178. House, David	270		
179. House, George	3,140		
180. 181. Heirs of J. S. Irwin	65		
182. Howland, James	1,700		
183, 184. Howard & Brother, Cheese Factory	550		
185. Horr, B. S	2,750		
186. Hews, Albian A	7,895		
187. Harter, Jacob L	5,250		
188. Hial, George	300	117. George Heyl	300
189. Hawley, Clemant	90		
190, 191. Hews, Patrick and Michael	5,700	118. 119. Patrick J. Hughes, Michael J. Hughes	5,700
192. Holler, Henry	2,400	120. Henry Hollar	2,400
193. Hial, Henry	725		
194. Hughs, Ann	1,330	121. M'r's A. Hughes	1,330
195. Irwin, William B	3,600		
196. Joels, William	260	122. William Joles	260
197. Johnson, William	160	123. William Johnson	160
198. Jerome, Lucien	560	124. Lucien Jerome	560
199. Jerome, Truman	2,445	125. Robert T. Jerome, or Truman Jerome, as on ass. roll	2,445
200. Jenkins, M'r's Jacob	1,810	126. M'r's Eve Jenkins	1,810
201. Jeffers, Irwin	Dog	127. Erwin Jeffers	
202. Jennings, George W	1,350	128. Geo. W. Jennings	1,350
203. Joerg, Joseph	330		
204. Jeffers, Harvey	Dog		
205. Kilborn, John	350	129. John Kilborn	350
206. Keech, John	25	130. John Keech	25
207. Kinyon, Solomon	20	131. Solomon Kenyon	20
208. Knight, William	150	132. M'm M. Knight	150
209. Krebs, Henry L	300	133. Henry L. Krebs	300
210. Killborn, James	200	134. James Kilborn	200
211. Kenyon, Seril	260	135. Seril Kenyon	260
212. Klock, Jacob A	1,550	136. Jacob A. Klock	1,550
213. Klock, Elijah	740	137. Elijah Klock	740
214. Klock, Adam	Dog		
215. Klock, Levi	760	138. Levi Klock	760
216. Klock, Arthur	3,150		
217. Larabe, William	2,265	139. William R. Larabee	2,265
218. Loucks, Levi	2,000	140. Levi Loucks	2,000
219. Loucks, Zenas & Romain	720	141. Zenas A. Loucks, Romain Loucks	720
220. Loucks, Zenas	825	142. Zenas A. Loucks	825
221. Lamson, Luther	785	143. Luther Lamson	785
222. Lewis, M'r's William	200	144. M'r's J. E. Lewis	200
223. Lewis, William	150	145. W. S. Lewis	150
224. Loucks, Andrew M	2,970	146. A. M. Loucks	2,970
225. Lilly, Harvey	220	147. Harvey Lilley	220
226. Lawrence, Josiah	130		
227. Lagraves, George W	60		
228. Lagraves, Denis	40		
229. Lingenfelter, Henry D	3,000		
230. Lehr, Michael See	4,500		
231. Lee, Thomas	7,750		
232. Lehr, Jacob	200		
233. Lehr, Nicholas	200		
234. Lehr, Michael	6,760		
235. Lehr, John	165		
236. Lehr, Michael, 2d	60		
237. Mahar, Richard	340	148. Richard Maher	340
238. Marsh, B. B	1,500	149. B. B. Marsh	1,500

239.	McGormick, Michael	1,710	150. Michael (his X mark) McCormick	1,710
240.	Mayer, M'r's George, jr	280	151. M'r's George Mayer, jr	280
241.	Mitchell, Henry	250		
242.	Mason, Orin	80		
243.	Marshall, Jotham	1,040	152. Jotham Marshall	1,040
244.	Marshall, G. H	875	153. G. H. Harshall	875
245.	Mayer, Valentine	120	154. Valentine Mayers	120
	Miller, Peter	Dog		
246.	Mahanna, William	1,000	155. William Mahanna	1,000
247.	Mayers, George	185	156. George Mayer	185
248.	Marsh, George P	270		
249.	Mitchel, Matthew	800		
250.	Mitchel, Isaac	2,410		
251.	Mitchel, Hiram and Hiram, jr.	600		
252.	Mitchel, Hiram	1,750		
253.	McCoy, Cornelius	380		
254.	McKinley, William	540		
255.	Newton, Pliny	630		
	Newton & Holloway	130		
	256. Newton, J. S	1,100		
264	257. Newton, R. M	465		
	258. Newton, S. P	840		
259.	Newton, Abagail	200		
260.	Noyes, Nathan	250	157. Nathan Noyes	250
261.	Nash, Josiah	700		
262.	Nash, Singar	350	158. Singar Nash	350
263.	Nellis, Adam	450		
264.	Nellis, Peter W	40		
265.	Nellis, Solomon	4,900		
266.	Nester, Michael	450		
267.	Oriley, Franklin	900	159. Francis O. Riley	900
268.	Otis, William	730		
269.	Patterson, Jonah	890	160. Jonah Patterson	890
270.	Peabody, Henry	25	161. Henry Peabody	25
271.	Prime, Levi	25	162. Levi ✕ Prime	25
272.	Proper, Peter	350	163. Peter Proper	350
273.	Patterson, Samuel	540	164. Samuel Patterson	540
274.	Patterson, Franklin	2,400	165. F. Patterson	2,400
275.	Philo, William	35		
276.	Priest, Albert	480	166. Albert Priest	480
277.	Petrie, Charles A	610	167. Charles A. Petrie	610
278.	Petrie, Harvey	Dog	168. Harvey Petrie	
279.	Pierce, Aneil	60	169. Ester Mercy	60
280.	Pelger, George	130	170. George Pilger	130
281.	Patrick, Fitzpatrick	Dog		
282.	Priest, Samuel D.	1,580	171. Samuel D. Priest	1,550
283.	Petrie, Lucinda	90	172. Lucinda (her X mark) Petrie	90
284.	Payne, William	5,430	173. Solomon Pickard	1,000
285.	Pickard, Solomon	1,000	174. Merrick Pickard	900
286.	Pickard, Merrick	900		
287.	Peck, Woolsey	1,800		
288.	Poth, Conrad	Dog		
289.	Petrie, Jeremiah	4,200		
290.	Palmer, Eli	1,100		
291.	Petrie, John	340		
292.	Petrie, Moses	260		
293.	Petrie, Sanford	5,110		
294.	Petrie, Barbara, widow	100		
295.	Philhart, John	170		
296.	Putney, John J	150		
297.	Rogers, William	2,940	175. William Rogers	2,940
298.	Reed, Spencer D	1,200	176. S. D. Reed	1,200
299.	Robins, Edmund	25	177. E. M. Robbins	25
300.	Robinson, Walter	2,820	178. Walter Robinson	2,820
301.	Reed, N. R	480		
302.	Randall, Andrew	40		
303.	Ramsdill, M'r's Ledsmar	60	179. M'r's Ledsmar Rogers	60
304.	Reed, Lewis E	630	180. Lewis E. Reed	630

305.	Richardson, Sarah	240	181.	Sarah A. Richardson	24
306.	Road, S. F	430	182.	S. F. Rood	430
307.	Rasbeck, Joseph	2,820			
308.	Russell, John	Dog			
309.	Raught, Abram	900	183.	Abram Raught	900
310.	Rouse, Merrick	40			
311.	Rapp, Henry	2,330			
312.	Rotier, John N	6,650			
313.	Resch, Philip	2,400	184.	Philip Resh	2,400
314.	Rapp Jenet	2,000			
315.	Simpson, L. S	100			
	316. Stackhouse, T. R	410	185.	T. R. Stackhouse	410
265	317. Sargver, William L	700			
	318. Snell, Alonzo	450			
319.	Simpson, Samuel R	20			
320.	Sheeley, George	650	186.	George Sheley	650
321.	Shollenbergh, Charles	1,130	187.	Ch. Shollenberg	1,130
322.	Smith, Robert	780	188.	Robert Smith	780
323.	Smith, William	410	189.	W. C. Smith	410
324.	Spalsbury, John	1,850	190.	John Spalsbury	1,850
325.	Sargent, Edmund	4,050	191.	Edmund Sargent	4,050
326.	Sumner, Aaron	500	192.	Aaron Sumner	500
327.	Strough, George H	2,550	193.	George H. Strough	2,550
	Spalsbusy, John	330		John Spalsbury	330
328.	Snell, Frederick	380	194.	Frederick Snell	380
329.	330. Sheeley & Carter	1,050	195,	196. W. W. Sheeley, Waitstill Carter, representing Sheeley & Carter on ass. roll	1,050
331,	332. Spaulsbury, James and Albert	930	197,	198. A. J. Spalsbury, Albert Spalsbury	930
333.	Stackhouse, Samuel	30			
334.	Smith, Simeon	1,260	199.	Simeon Smith	1,260
335.	Simmonds, L. D.	460	200.	L. D. Simmonds	460
336.	Snell, Amos	1,420			
337.	Snyder, John K	30	201.	J. H. Snyder	30
338.	Schoville, George B	400	202.	G. B. Scovill	400
339.	Stephens, H. M	500	203.	H. M. Stevens	500
340.	Shollenberg, M'r's	150			
341.	Strough, B. J	Dog	204.	Byron J. Strough	
342.	Snell, Alanson	3,075	205.	Lansing Snell	3,075
343.	Snell, Jacob	265	206.	Jacob Snell	265
344.	Sheldon, B. B	920			
345.	Shaber, Lewis	1,720			
346.	Shaber, Philip	Dog			
347.	Sargent, Lewis H	1,670			
348.	Sargent, Mary	490	207.	Mary (her X mark) Sargent	490
349.	Sargent, B. F	200	208.	B. E. Sargent	200
350.	Smith, Abram	100	209.	Abram Smith	100
351.	Sargent, E. T	400	210.	E. T. Sargent	400
352.	Sargent, Fileny	100	211.	Philany Sargent	100
353.	Shimmel, Conrad	1,080	212.	Conrad (his X mark) Shimmel	1,080
354.	Shimmel, Benjamin	700	213.	Benjamin Shimmel	700
355.	Spalsbury, Sarah M	100	214.	Sarah M. Spalsbury	100
356.	Sawyer, Samuel	2,200			
357.	Sargent, Simeon	1,610	215.	S. W. Sargent	1,610
358.	Sargent, William	3,360	216.	William Sargent	3,360
359.	Sargent, Clark	1,790	217.	Clark W. Sargent	1,790
360.	Smith, Rufus	400	218.	R. C. Smith	400
361.	Smith, Daniel	850			
362.	363. Smith, Benjamin, & Co.	150			
	Sloat, E. A., & Brother	170			
364.	Sloat, Edward A	300			
365.	Sloat, George S	200			
366.	Scram, M'r's Walter	1,300	219.	Ruth Schram	1,300
367.	Sowerwine, George	1,170	220.	George Sourwine	1,170
368.	Stickney, Mary	340			
369.	Shell, Isaac	1,310			
370.	Shell, Joseph	770			
371.	Sanderson, James F	80			
	372. Smith, Warren	1,050	221.	Warren R. Smith	1,05
266	373. Simonett, Marsett	2,390	222.	Marcel Simonet	2,39

374. Snell, John A	6,010	223. John A. Snell	6,010
375. Scoville, Stephen	1,945	224. Stephen Scoville	1,945
376. Snell, Miron	1,600		
377, 378. Smith, John and Lyman	5,640		
379. Shed, Alonzo	1,860		
380. Snell, A. J	3,320	225. A. J. Snell	3,320
381. Tom, Robert	35	226. Robert Tom	35
382. Tausau, Francis	550		
383. Tausau, Francis, j'r	600		
384. Turner, Betsey	700	227. Betsey Turner	700
385. Tanner, M. S	1,380	228. Melvin S. Tanner	1,380
386. Tucker, Green	100	229. Green Tucker	100
387. Tucker, Abel	140		
388. Taylor, M'r's Benjamin	350		
389. Taylor, James A	1,410	230. J. A. Taylor	1,410
390. Tucker, George	870		
391. Tarble, E. E	275	231. E. E. Tarbell	275
392. Tallman, M'r's Louisa	400	232. Louisa Tallman	400
393. Turner, R. M	300	233. R. M. Turner	300
394. Tarble, Widow	530	234. Aurelia M. Tarbell	530
395, 396. Timmerman, H. T. & Co.	2,880	235, 236. H. F. Timmerman, G. C. Timmerman & George H. Timmerman, representing H. F. Timmerman & Co. on ass. roll	2,880
397. Timmerman, H. T	130	237. H. F. Timmerman	130
398. Timmerman, Ephraim	1,400	238. E. Timmerman	1,400
399. Timmerman, Asa	850		
400. Timmerman, Jeremiah	1,820	239. Jeremiah Timmerman	1,820
401. Timmerman, William	1,310	240. William Timmerman	1,310
402. Timmerman, Jason D	1,425	241. Jason D. Timmerman	1,425
403. Timmerman, Reuben	2,920	242. Reuben Timmerman	2,920
404. Turner, John	625	243. John Turner	625
405. Turner, Gustavus	240	244. Gustavus Turner	240
406. Timmerman, George F	2,880	245. G. F. Timmerman	2,880
407. Tallman, Jermain	1,400	246. Jermain Tallman	1,400
408. Tallman, Abram	465	247. Abram Tallman	465
409. Turner, Jacob	400	248. Jacob Turner	400
410. Vandewalker, Christopher	170		
411. Vanderwalker, M'r's E. C	840	249. M'r's E. C. Vanderwalker	840
412. Van Epps, J. C	250	250. J. C. Van Epps	250
413. Vanconett, George	1,395	251. Geo. W. Vancoughnet	1,395
414. Vanconett, N. W	240	252. N. W. Nancoughnet	240
415. Vancamp, Henry	1,600		
416. Wright, John	945	253. John Wright	945
417. Waworth, Aaron	240		
418. Workman, Valentine	450	254. Valentine Workman	450
419. Wiley, Merrick	450	255. William M. Wiley	450
420. Wiley, Joshua	900	256. Joshua Wiley	900
421. Welch, Charles	870	257. Charles Welch	870
421. Wooledge, Alfred J	60	258. Alfred J. Wooledge	60
422. Wood, Benjamin	210	259. Benjamin Wood	210
Walts & Ellis	90	Nicholas Walts Halsey Ellis, rep. Walts & Ellis on ass. roll	90
423. Walts, Nicholas	90	260, Nicholas Walts	90
424. Wilder, Clark	300		
267 425. Waltz, Allice	260	261. Alice Walts	260
426. Wilder, David, widow	80	262. M'r's David Wilder	80
427. Wooledge, Alfred	1,420	263. Alfred Wooledge	1,420
428. Wilder, George	80		
429. Whaley, William	5,005	264. W'm Whaley	5,005
430. Winom, Joseph	Dog	265. Winom, Joseph	
431. Walter, John M	745	266. John M. Walter	745
431. Walts, Charles	2,005	267. Charles Walts	2,005
432. Welts, John	360		
433. Walts, Nelson	1,230	268. Nelson Walts	1,230
434. Wagoner, Andrew	2,500		
435. Wetherhorn, Henry	1,500		
436. Wetherhorn, Frederick	2,400		

437. Wagoner, Addison	850			
438. Wetherhorn, Charles	1,950			
439. Wilder, George	1,890			
440. Wilder, Joseph	930			
441. Wilder, Eugene	60			
442. Yerden, Solomon H	1,050			
443. Zimmer, Philip	1,370	269. Philip Zimmer		1,370
444, 445. Cornwall & Walton	800			
446. Moore, H. P	1,160	270. H. P. Moore		1,160
447. Bowen, Asa	200	271. Asa & Bowen		200
448. Calhoun, Benjamin	210	272. Benjamin Calhoun		210
449. Troop, H. N	1,000			
450. Roor, Daniel	1,100			
451. Watson, John	650	281. John Watson		650
452. Nurm, William U	460	273. W. U. Nunn		460
453. Laflur, Henry	200	274. Henry Laflur		200
454. Nunn, William	400	275. William Nunn		400
455. Robbins, Eldridge	200	276. Eldridge G. Robbins		200
456. Post, Benjamin	1,100	277. Benjamin Post		1,100
457. Post, Jacob H	Dog	278. Jacob H. Post		
458. Wagoner, Jacob A	500	279. S. A. Wagoner		500
459. Wagoner, Jeremiah	Dog			
460. Moore, John	40	280. John Moore		40
461. Dano, Aaron	25			
462. Johnston, Nelson	Dog			
463. Harden, John	25	281. John Harden		25
464. Barton, Edward	220	282. Edward Barton		220
465. Swann, Alpheous	400			
466. Belleville, Israel	330			
467. Fuller, Sydney	770	283. S. F. Fuller		770
468. Rood, Charles	120	284. C. P. Rood		130
469. Haws, George	300			
*Dorr, John	300	John Dorr		300
471. Dorr, Henry	200	285. G. H. Door		200
472. Sherman, Charles	650			
473. Reese, D. S	400	286. D. S. Rees		400
474. Reese, William	800	287. William Rees		800
475. Gould, Alexander	105			
476. Nellis Warren	145			
477. Nellis, Peter	225	288. Peter Nellis		225
479. Miller, Elijah	110	289. (See preceding page.)		
480. White, Ed	105			
481. Currier, Thomas G	70			
482. Gould, Daniel	35			
483. Devendorph, Abram	70			
484. 485. Smith & Spicer	120			
486. Nellis, John P	70			
487. Burke, S. W	105			
268 488. Low, Chester	35			
489, 490. Marshall & McGinnis	175			
391. Baldwin, Edwin	35			
492. Peck, A. W	70			
Howard, Milton	35			
493. Davis, Herkimer	35			
	498, 420			281, 820

289. Including 6 names assessed for dog tax.
283. Excluding names assessed for dog tax.

*John Dorr has been counted twice; Beardsley Brothers counted once—making number of tax-payers the same.

SCHEDULE E.

June 5, 1871.—A. H. S.

Articles of association of the Clayton and Theresa Railroad Company.

[5-cent in. rev. stamp cancel'd.]

Know all men by these presents that we, whose names are hereunto subscribed, pursuant to the provisions of the act of legislature of the State of New York, chapter 140, laws of 1850, entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April 2d, 1850, and the amendments thereto, do hereby associate together under the name of the Clayton and Theresa Railroad Company, for the purpose of constructing and maintaining and operating a railroad for public use in the conveyance of persons and property to
269 and from the vicinity of Clayton, in the county of Jefferson, and running through the towns of Clayton, Orleans, and Theresa, and Philadelphia, to a point on the Black River and Morristown Railroad, in the said county of Jefferson, at or near the village of Philadelphia.

The provisions of the association are as follows:

The said company to continue in existence for the term of one hundred years from the date of its organization; the line of road contemplated and herein provided for shall be constructed with all proper turnouts, sidings, and branches from Clayton Village, in the county of Jefferson, and along the line through the towns of Clayton, Orleans, Theresa, and Philidelphia, in the said county of Jefferson, to a point on the Black River and Morristown Railroad at or near the village of Philadelphia, in the said county of Jefferson; the length of said road shall be about twenty miles; the amount of the capital stock of the said company is hereby fixed at the sum of two hundred and fifty thousand dollars, divided into two thousand and five hundred shares of one hundred dollars each, and the name of such company shall be the Clayton and Theresa Railroad Company.

The following-named thirteen persons are hereby named and appointed as directors of the said company, under the provisions of the said act, and shall manage its affairs for the first year until others shall be chosen in their places, viz:

ALDEN F. BARKER, Clayton, *Jefferson County, N. Y.*
THOMAS REES, " " "
JOHN JOHNSTON, " " "
RICHARD M. ESSELSTYNE, Clayton, " "
JAMES JOHNSON, " " "
JOHN DORR, " " "
HORATIO STILL, Theresa, " "
RUSSEL B. BIDDLECOM, Orleans, " "
CORNELIUS BORT, " " "
270 WILLIAM WHALEY, " " "
JOHN H. SNELL, " " "
WILLIAM ROGERS, " " "
NATHAN HOLLOWAY, " " "

[5-cent in. rev. stamp cancel'd.]

[Nine 5-cent in. rev. stamps, cancel'd.]

We, the subscribers, have hereunto affixed our hands, with our respective places of residence and the number of shares of capital stock respectively subscribed by us, this 24th day of January, 1871.

Names of subscribers.	Residence.	No. of shares.	Amount of stock.
A. F. Barker	Clayton, N. Y	Ten	1,000
Tho's Rees	" "	Ten	1,000
C. C. Calvin (by T. Rees)	Garden Island, Ont	Five	500
Augustus Potter	Clayton, N. Y	Five	500
S. G. Johnston	" "	Five	500
James Johnson	" "	Five	500
R. M. Esselstyn	" "	Five	500
John Johnston	" "	Five	500
J. B. & J. T. Hubbard	" "	Five	500
E. McCarn	" "	Five	500
F. Barrett	" "	Five	500
S. D. Johnston	" "	Five	500
John H. Graves	" "	Two	200
Amos Ellis	" "	Three	300
S. Hale	" "	Five	500
David S. Rees	" "	Two	200
Luther Eddy	" "	Two	200
Seeber McCorn	" "	One	100
Joseph Thibault	" "	Two	200
John J. Delany	" "	Two	200
H. G. Barker	" "	One	100
Charles M. Marshall	" "	One	100
Swart & Dunton	" "	Two	200
Andrew Peters	" "	One	100
Richard Halpin	" "	Two	200
Daniel A. Garlock	" "	One	100
Simon Breslaw	" "	One	100
271 David Bearup	Theresa, "	Two	200
Bain Eros	Clayton, "	One	100
L. E. Frame	Depauvilie, N. Y	Two	200
Phillips & Buckley	Clayton "	One	100
William Hawes	" "	One	100
M. Cantwell	" "	One	100
Russell B. Biddleeom	Orleans, N. Y	Five	500
Nathan Holloway	" "	Five	500
W'm Whaley	" "	Five	500
W'm Rogers	" "	Five	500
David Page	Clayton, N. Y	One	100
D. J. Dewey	Orleans, N. Y	Three	300
John A. Snell	" "	Five	500
Robert T. Jerome	" "	Five	500
G. F. Balts	" "	Two	200
C. Bort	" "	Five	500
Wayland F. Ford	" "	Five	500
Adam Fort	" "	One	100
Michael J. Hughes	" "	One	100
Luther Lamson	" "	Two	200
Antionie Charlebois	Clayton, N. Y	One	100
L. C. Hawn	" "	One	100
Henry Walt	" "	Two	200
Silas H. Linnell	" "	One	100
A. M. Barney	Clayton Centre, N. Y.	One	100
C. R. Linnell	Clayton, N. Y	One	100
Geo. D. Linnell	" "	One	100
Ambrose Littlefield	" "	One	100
Patrick McKinley	" "	One	100
Fred Deford	" "	One	100
James Loughlin	" "	One	100
Lawrence Fetterly	" "	One	100

Names of subscribers.	Residence.	No. of shares.	Amount of stock.
Benj. Kent	Clayton, N. Y	One	100
C. C. Chadwick	Theresa, N. Y	One	100
V. & J. Cooper	" "	One	100
Joseph Fayel	" "	One	100
Geo. E. Yost	" "	One	100
L. Hannahs	" "	One	100
Horatio Still	" "	One	100
Martin Barney	Clayton, N. Y	Three	300
John H. Graves	" "	Four	400
S. G. Johnston	" "	One	100
G. M. Hale	" "	One	100
Thomas Dowdall	" "	One	100
Bernard Heldt	" "	One	100
272 W'm H. Rees	" "	One	100
S. S. Sooper (per B)	" "	Two	200
J. W. Thompson	" "	One	100
D. C. Porter	" "	One	100
Albert Brooker	" "	One	100
David Boyd	" "	One	100
H. E. Morse	" "	One	100
P. A. De Lambae	" "	One	100
Hial Cook	" "	One	100
L. E. Phillips	" "	One	100
J. B. Sherman	" "	One	100
Daniel Garlock	" "	Two	200
W'm H. Consaul	" "	One	100
John W. Hayes	" "	One	100
A. Buskirk	" "	One	100
W'm Hutchinson	" "	One	100
John Dorr	" "	Five	500
G. H. Dorr	" "	Two	200
Nelson Defore	" "	One	100
A. P. Rogers	" "	One	100
G. W. Hill	" "	One	100
D. T. Corp	" "	Two	200
C. E. Share	" "	One	100

[5 cent in. rev. stamp, cancel'd.]

STATE OF NEW YORK,
Jefferson County, ss:

Russell B. Biddlecom, Alden F. Barker, and Richard M. Esseltyn, being each duly sworn, deposes and says, each for himself, *deposes and says*, that they are directors of the Clayton and Theresa Railroad Company, named in the annexed articles of association, and they depose and say that at least one thousand dollars of stock for every mile of railroad proposed to be made has been in good faith subscribed thereto, and ten per cent. paid thereon in good faith and in cash to the di-
273 rectors named in said articles of association, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association.

ALDEN F. BARKER.
R. M. ESSELTYN.
RUSSEL B. BIDDLECOM.

Sworn to before me this 4th day of February, 1871.
[L. S.] WAYLAND F. FORD,
Notary Public.

STATE OF NEW YORK, *ss:*

OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding with the original articles of association of the Clayton and Theresa Railroad Company, with affidavit thereto annexed, filed and recorded in this office on the 7th day of February, 1871, and hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and seal of office, at the city of Albany, this 16th day of February, one thousand eight hundred and seventy-one.

[L. S.] D. WILLERS, J'R.
Dep. Secretary of State.

SCHEDULE G.

June 6, 1871.—A. H. S.

To the Hon. A. H. Sawyer, county judge of the county of Jefferson:

274 We, undersigned tax-payers of the town of Orleans, in said county, having heretofore, on certain considerations and conditions signed a petition addressed to yorr honor, setting forth among other things that we desired that said town of Orleans should create and issue its bonds to an amount named in said petition and invest the same or the proceeds thereof in the stock of the Clayton and Theresa Railroad Company, and praying that commissioners be appointed for that purpose, which petition we understand has been presented to your honor, do hereby represent to your honor that we signed the said petition under misapprehension, and that we are now not in favor of the said bonding scheme and hereby authorize our names from such petition and request your honor to strike our names therefrom and not to consider us as consenting or petitioning as in said petition set forth.

Conrad Schimel,
Marcel Simonet,
Solomon Pickard,
Benjamin Shimel,
Anthony Herbrecht,
M'r's Eve Jenkins,
Jeremiah Timerman,
Elizabeth Hughes,
Valentine Brightweser,
A. M. Loucks,
Horace Garlock,
Abram Garlock,
M'r's Mary Barlow,
Joseph Fultz,
Henry Dorr,
George Dorr
Cornelius Mahanna,
William Mahanna,
Thomas Hagan,
Frederick Snell,
Nelson Walts,
Charles Walts,
Philip Zimmer.

SCHEDULE I.

We, the undersigned tax-payers of the town of Orleans, are opposed to the bonding of said town for the purpose of building a railroad, unless said road runs from Clayton to Watertown by way of or near to the village of Stone Mills, in Orleans. Watertown and Pamelia to build said road across the town of Pamelia.

275 SCHEDULE K.

June 7, 1871.—A. H. S.

FEBRUARY 15, 1871.

We, the undersigned tax-payers and citizens of the town of Orleans, are opposed to the bonding of said town for the purpose of building a railroad across said town.

C. D. Graham,
D. H. Lingenfelter,
Peter W. Nellis,
Geo. S. Sloat,
E. A. Sloat,
Henry Van Camp,
George W. Jennings,
Eugene Wilder,
George Wilder,
Cha's E. Gillet,
Valentine Dietrich,
Alonzo Shedd,
Michael Nestor.

SCHEDULE L.

Schedule containing the names and assessment of the tax-payers of Orleans appearing on assessment roll obtained after the indignation meeting held on Saturday after the town meeting:

Francis O. Riley	900	Simon Folts	8,500
Levi Loucks	2,000	W'm Whaley } Samuel Harris }	5,005
Jacob Snell	265	W'm Whaley	2,325
David Gordon	650	Sarah V. Dubois	240
Henry Hellars	2,400	George Dorr	1,070
Sam. Gray	1,840	Philip Bushnell	165
M'r's Solon Arnold	60	T. D. Flansburgh	130
John Wright	945	Romain Loucks } Zenas A. Loucks }	720
Jacob Turner	400	Henry Dorr	1,775
Harvey Lilley	220	Ruth Scram	1,300
Benjamin Garner	565	Clarissa Evans	3,060
Philip Resh	2,400	J. A. Taylor	1,410
A. E. Dewey	845	S. W. Gates	4,070
J. Bushnell	120	George Sowerwine	1,170
Alonzo Church	400	George W. Jennings	1,350
Joseph Castler	1,060	R. W. Gates	800
John Bretsch	1,725	William Johnson	160
Robert Delay	530	William Sargant	3,360
Zenas A. Loucks	825	Clark W. Sargant	1,610
Simeon Smith	1,160	S. W. Sargent	1,790
John Kilborn	350	Jacob A. Klock	1,550
Alfred J. Wooledge	60	Levi Klock	760
Lansing Snell	3,075	Elijah Klock	740
Walter Robinson	2,820		
M'r's William Hose	615		

276 SCHEDULE M.

In the matter of the petition of Russel B. Biddlecom and others.

JEFFERSON COUNTY, *ss:*

William B. Irwin, of Orleans, being duly sworn, says that he is one of the contestants; that Jacob A. Klock, Levi Klock, and Michael Fults are material and necessary witnesses for the contestants in this matter;

that he has fully and fairly stated to John Lansing, the counsel of the contestants in this matter, what he expects the contestants will be able to prove by each and every of the said witnesses, and that each and every of the said witnesses is material and necessary for said contestants, as he is advised by said counsel after such statement so made as aforesaid and verily believes; that he expects to be able to prove by each and every of said witnesses that it was represented to each and every of them that the town of Orleans would be bonded any way, and unless they and each of them signed the petition presented to them, and which they did sign, the town would be bonded for a road by the way of Stone Mills, and that would cost them more than the Theresa route; that each and every of said witnesses were opposed to bonding the town for any railroad, and so informed Biddlecom, by whom they were obtained to sign, but believing the misrepresentation as to the fact that the town would be bonded any way and that it would cost them less by the way of Theresa than Stone Mills, they signed; that if it had not been for such representation they and each of them would not have signed said petition; that deponent did not discover this testimony or that said witnesses would be able to prove these facts as stated above until yesterday; that deponent has had principal charge of the defence
277 of the proceedings for the contestants and has spent much time in looking up and discovering the testimony in this matter, and that this testimony above stated was not known to deponent until yesterday; that said witnesses appear on the assessment roll for about $3,600.

W. B. IRWIN.

Sworn to before me this 27th day of June, 1871.

J. W. WEEKS,
Notary Public.

SCHEDULE F.

June 6, 1871.—A. H. S.

HOW ASS.	ASS.		PETITION.
P.	250	Beardsley Bros.....	D. W. Beardsley, A. B. Beardsley, on ass. roll, Beardsley Bros.
J. O.	90	Walts & Ellis.....	Nicholas Walts, Halsey Ellis, representing Walts & Ellis on assessment roll.
T. & C.	150	Gillick & McCormick.....	Peter Gillick, Michael his X mark McCormick, representing Gillick & McCormick on ass. roll.
J. O.	1,050	Sheeley & Carter.....	W. W. Sheeley, Waitstill Carter, representing Sheeley & Carter on assessment roll.
P.	1,250	Dewey & Stephens.....	H. M. Stevens, A. E. Dewey.
J. O.	1,100	Dewey & Brown.....	Eleasor Dewey, Belcher A. Brown, Dewey & Brown on ass. roll.
T. & C.	2,325	Harris & Whaley.....	W'm Whaley, Samuel Harris.
T. & C.	1,900	Bushnell, George, & Miller.	George Bushnell, Peter Miller.
J. O.	720	Loucks, Zenas & Romain..	Romain Loucks, Zenas A. Loucks.
J. O.	5,700	Hughs, Patrick & Michael..	Patrick J. Hughes, Michael J. Hughes.
T. & C.	2,880	H. F. Timmerman & Co....	H. F. Timmerman, G. C. Timmerman, George H. Timmerman, representing H. F. Timmerman & Co. on ass. roll.
P.	75	Holloway & Keech.....	John Keech, Nathan Holloway.
J. O.	930	Spalsbury, James & Albert..	A. J. Spalsbury, James Spalsbury.
J. O.	1,050	Dennis, T. & A.....	A. W Dennis, T. W. Dennis.
	19,470		

EXPLANATION.

P. stands for partnership.
J. O. stands for joint owners.
T. in C. stands for tenants in common.

278 At a general term of the supreme court of the State of New York, in and for the fourth judicial department, held at the court-house in the city of Buffalo, in the county of Erie, on the 20th day of June, 1872.

Present, Hon. Joseph Mullin, presiding justice; Thomas A. Johnson, John L. Talcott, associate justices.

THE PEOPLE, EX REL. WILLIAM B. IRWIN ET al.,
against
AZARIAH H. SAWYER, COUNTY JUDGE OF JEFFERSON COUNTY, et al.

Judgment and determination of county judge affirmed, with costs to respondent.

Opinion by Talcott, justice.

Copy.

S. N. BRUNELL,
Sp. Dep. Clerk, Erie Co.

Entered June 27, 1872.

279 *Judgement of Affirmance.*

Supreme court.

THE PEOPLE, ON THE RELATION OF WILLIAM B. Irwin, Cornelius Bort, and Albion A. Hughes,
against
AZARIAH H. SAWYER, COUNTY JUDGE OF JEFFERSON COUNTY, Jacob Stears, j'r, county clerk of the county of Jefferson.

The certiorari in the above-entitled cause having been brought to a hearing upon the return of the respondents thereto, at a general term of the supreme court of the State of New York, in and for the fourth judicial department, held at the court-house in the city of Oswego, in the county of Oswego, on the 9th day of May, 1872, which certiorari and return are hereto annexed and form a part of this roll, and the said court, after hearing Levi H. Brown, es'q, for the relators, appellants, and F. W. Hubbard, for the respondents, opposed, and due deliberation thereto being had, having on the 20th day of June, 1872, at a general term of said court, held at the court-house in the city of Buffalo, in the county of Erie, caused an order to be entered with the clerk thereof affirming the judgment and determination of the said Jefferson County court, and a certified copy of which order is hereto annexed, and the said court having in their said order granted costs to the respondents, now on motion of F. W. Hubbard, attorney for the said respondents, it is ordered and adjudged that the said judgment and determination of the said Jefferson County court, respondent, be, and the same is hereby, in all things, affirmed, with costs to be paid by the said relators, appellants, and the costs

280 having been duly adjusted at the sum of eighty-nine dollars and nine cents, it is ordered that the respondents recover against said relators, appellants, the said sum of eighty-nine dollars and nine cents for said costs and disbursements, and that they have execution thereof.

GEORGE COLE,
Dep. Clerk.

Entered July 1st, 1872, at 11 a. m.

And I further certify that I have compared the foregoing with the originals thereof and that the same are correct copies thereof and of the whole of said originals.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county and courts this seventh day of August, 1872.

[L. S.] JACOB STEARS, J'R, *Clerk.*

Certiorari to bring up proceedings under the town-bonding act of 1869, *to bond the town of Orleans.*

In supreme court.

4th department, June term, 1872.

THE PEOPLE, EX REL. WILLIAM B. IRWIN, et al.,
ag'st
AZARIAH H. SAWYER, COUNTY JUDGE OF JEFFERSON COUNTY, and Jacob Stears, j'r, county clerk of Jefferson County.

Present: Mullin, P. J.; Johnson & Talcott, J. J.

MEMORANDA OF DECISION. OBSERVATIONS ON RELATOR'S POINTS.

As to point 1. The petition was presented before the passage
281 of the act of 1871, and does contain a statement that the petitioners are a majority of the taxpayers and represent a majority of the taxable property as required by the act of '69.

Point 2. The verification does state that the person verifying is one of the petitioners (fol. 164). But it also appears that the person making the verification is one of the petitioners, by the petition itself (fol. 88). The act does not require the fact to be stated in the affidavit. The statute prescribes no form of verification. This verification is in the form authorized and required for a verification of a petition in legal proceedings in general and is sufficient. The act does not require that the verification should state that the petitioners are a majority, &c. It is to be stated in the petition. The description in the verification is that "he is one of the petitioners hereto annexed and has read the said petition." This sufficiently identifies the petition intended to be verified.

Point 3. The order to show cause sets forth all that is required by the statute. The paper given in evidence was produced as, and conceded to be, the last assessment-roll.

Point 4. The validity of the assessments, as such, are not in question before the county judge. It is the last assessment roll de facto, which furnishes the guide provided for by statute. Nor is it of any consequence, under the act of '69, whether the taxes had been collected or paid.

Point 5. The names of such petitioners as did not subscribe their names personally are proved to have been placed upon the petition in the presence and at the request of such petitioners respectively.

Point 6. No rule of law requires a mark to be witnessed. If it
282 can be proved by a person who saw it made, it is sufficient. A suscribing witness to a mark only indicates by whom it is to be proved in that case.

Point 7. When the assessment-roll showed the same names as those on the petition, they were presumptively the same persons. Where there was a variance the names on the assessment-roll were shown by the evidence to stand for those on the petition.

Point 8. Where persons were assessed as partners or joint owners it was proved that each had signed the petition. It is of no consequence whether the assessors had a right to assess the partnership by its partnership name or not. The validity of the assessment was not in question.

Point 9. The assessment roll is the evidence that the parties assessed represent the property which is assessed to them, where the assessment is in the ordinary form, of such property to such a person. The roll is referred to as the evidence which is to govern, and the offer to show that some of those assessed had sold their property since the making of the assessment roll was immaterial.

Point 10. We have held that the petitioners cannot withdraw their names after the petitions have beeen presented to the county judge. (The People vs. Franklin, Judge of Seneca Co., Mss.) See also 38 How., 535.

Point 11. There was no such evidence of fraud as would authorize us to reverse the finding of the county judge on that question.

Point 12. The declaration of Biddlecom, if made, was immaterial and could not legitimately induce others to sign so far as we can see.
283 But the question of fact was decided by the county judge against the contestants.

Point 13. The county judge exercised a discretion in refusing to open the case to get the testimony of the two Klocks and Fultz. Their testimony could not have affected the result.

Point 14. The non-residents were taxpayers and assessed as such, and had as much interest in the question as the residents, at least against the road.

Point 15. No sufficient evidence of fraud, and the fact otherwise decided by the county judge.

Point 16. This point is merely an aggregation of the results claimed from the other points.

Point 17. The constitutionality of the act is not an open question in this court.

The proceedings should be affirmed, with costs to the respondents.

A true copy.

JOSEPH V. SEAVER, *Clerk.*

(Pages 284 and 285, index, placed in front.)

286 At a special term of the supreme court held at the court-house in Watertown, in & for the county of Jefferson, on the 19th day March, 1873:

Present, Hon. G. A. Harding, justice.

THE PEOPLE EX RELATION' OF WILLIAM B. Irwin & others, appel'ants,
ag'st
AZARIAH H. SAWYER, COUNTY JUDGE OF Jefferson County, & Jacob Stears, j'r, county clerk, &c., respondents.

This cause having been brought on upon the remittitur herein, sent down from the court of appeals and now filed in this court, by which remittitur it appears that an appeal was taken by the relators from a judgment of this court to the said court of appeals, and that said court of appeals reversed the said judgment of the supreme court & the order of the county judge, and dismissed the proceedings.

Now, after hearing Lansing & Sherman, attorneys for appel'ants, & F. W. Hubbard for the respondents, it is ordered and adjudged that the judgment of the said court of appeals be, and the same is hereby, made the judgment of this court; and the appellants having applied for an order directing the manner of collecting costs in this matter, and the court holding that the costs are in the discretion of the court, and not
287 a matter of right to the prevailing party, the motion for such direction in references to costs is hereby denied on the ground that this is not a proper case to allow costs.

JEFFERSON COUNTY, *ss:*

CLERK'S OFFICE.

I, Jacob Stears, j'r, clerk of the county of Jefferson, and of all the courts of record in and for said county, do hereby certify that I have compared the copy of order hereto attached with the original order entered in this office, and that the same is a true and correct transcript thereof and the whole of said original.

Witness my hand and seal of office this 12th day of June, 1875.

[L. S.] JACOB STEARS, J'R, *Clerk*,
By GEO. COLE, *Dep. Clerk*.

288 (Copy.)

JEFFERSON COUNTY, *ss:*

CLERK'S OFFICE.

On examination of the rules of the county court of said county, book No. 2, in this office, I find the following entry, page 285:

In the matter of the petition of tax-payers, &c., of the town of Orleans to create and issue bonds and invest the proceeds in the Clayton and Theresa R. R. Co.

1871. July 3. Docketed judgment.—HUBBARD & WRIGHT.

And on examination of supreme court rules, book No. 7, pages 74 & 412, I find the following entries:

LANSING & SHERMAN; HUBBARD & WRIGHT.

The People ex. rel. Irwin, &c., ag'st Azariah H. Sawyer, co. judge.—

1871.	Sept. 30.	Entered order for certiorari (cham.).
"	"	Filed aff's & notice of mo.
Oct. 14.		" certiorari (cham. mts.).
1872.	July 10.	" notice of appeal.
	"	" undertaking on appeal.
1873.	M'ch 14.	" remitt'ur judg't reversed.

1873. M'ch 14. Filed proposed order & notice of settlement.
" " " Entered order making judgment of court of appeals the judgment of this court (sup. mts.).
1872. June 27. Entered order affirming judgment county court (cham. mts.).
" July " Docketed judgment for respondents.
1873. April 17. Filed notice of appeal from order.
1874. Jan. 13. Entered order modifying order (cham.).

And I certify that the foregoing is a true copy of all such entries.
289 In witness whereof I have hereunto affixed the seal of all the courts of record in the said county and of said county this 14th day of June, 1875.

[L. S.]

J. STEARS, J'R, *Clerk*,
By GEORGE COLE, *Dep. Clk.*

290–293 In court of appeals.

THE PEOPLE EX. REL. WILLIAM B. IRWIN & others, appellants,
vs.
AZARIAH H. SAWYER, COUNTY JUDGE, & ET AL. respondents.

GENTS: Take notice that I am retained by and hereby appear for the respondent on the appeal herein, and that all papers herein may be served on me at my office, in the city of Watertown, Jefferson County, New York. Dated July 11, 1872.

Yours, &c.

F. W. HUBBARD,
Att'y for Resp'd't.

To Mess'rs LANSING & SHERMAN,
Att'y for App'l'ts.

294 SIMON FOLTS, a witness called and sworn for the defendant, testified:

About the time of the issue of the bonds the commissioners had some talk about having taken counsel as to certiorari and right to issue bonds. M'r Gates told me he had a talk with Judge Hubbard the day before the time we met to issue the bonds.

Q. About what?

Ans. O, in case this certiorari, in case there was one, about the certiorari suit, in case there was one. We heard by rumors that there was.

Q. Was M'r Strough present on that occasion?

Ans. I think he was.

Q. You had learned it in the fall, or heard it from M'r Bert and others?

Ans. Yes, sir; there was a rumor.

Q. That there was a certiorari brought from the proceedings before Judge Sawyer?

Ans. The rumor was they were going to or had done it.

Q. Didn't you learn long before issuing these bonds here there had been?

Ans. Merely by rumor.

Q. By rumor do you mean it was the subject of conversation among people generally where you happened to be?

Ans. No; not a subject of conversation but by a few of the men in town.

Q. You heard it spoken of?

Ans. Heard it spoken of by a few leading men in the town.

295 Q. Now, M'r Folts, you heard of the decision of the court of appeals about the time of its being announced?

Ans. I heard of it, but never saw it in print; never could get hold of it.

Q. How soon after that did you, Gates, & Strough meet M'r Biddlecom?

Ans. We happened to be in the office there al' together one evening.

Q. Biddlecom's office?

Ans. No, sir; the R. R. office.

Q. The office of Biddlecom, which was the treasurer's office?

Ans. M'r Strough spoke and said to Biddlecom, these bonds are worthless now, and, said he, now you better give us up those bonds and we will give you up your scrip; and M'r Biddlecom made reply he did not know as he could get them. It was soon after the court of appeals decision, and must have been the latter part of February, 1873. I was one of the petitioners before the county judge.

On his cross-examination the witness said:

I never knew what this proceeding I heard talked about was, more than what I heard said. There was no notice or paper served on me. When we came to subscribe Strough said he had consulted counsel, and he said that he advised him that we were all right to issue. It

296 was an accidental meeting at Biddlecom's office. Did not go there for any particular purpose. Strough kind of laughed when he spoke. I did not have the scrip there. There was no offer to produce the scrip. There was nothing more done about it.

On his redirect examination the witness said:

I never had the scrip in my possession to keep. M'r Strough took it, and I don't know but he had the scrip with him that evening. He did not suggest that he had.

Russel B. Biddlecom, recalled and examined by the defendants' counsel, testified:

I had the $70,000 bonds in question just before they were delivered to M'r Maynard; they were where I could command them by doing certain things. I handed over these $70,000 of bonds to M'r Isaac Maynard on the 31st May, 1873. This paper was executed by me as treasurer and secretary, and M'r Barker as president of our railroad company, on the day it bears date, and was delivered accompanying these bonds to M'r Maynard.

The defendant then read in evidence the said paper, which was in the words and figures following, viz:

UTICA, N. Y., *May* 31, 1873.

ISAAC MAYNARD, *Utica, N. Y.:*

297 You are hereby authorized, requested, and directed to sell or dispose of the bonds of the town of Orleans deposited with you this day as collateral security for the faithful performance of the contract made by the Clayton and Theresa Railroad Company with the Utica and Black River Railroad Company, upon such terms and in such manner as you shall deem best, and place the net proceeds, after deducting all charges for negotiation, expenses, and costs of sale, or arising from the sale, in the hands of the Utica and Black River Railroad Company,

as collateral security for the performance of the contract above mentioned.

A. F. BARKER,
Pres't of the Clayton & Theresa Railroad Company.
R. B. BIDDLECOM,
Sec'y & Treas. Clayton & Theresa R. R. Co.

298 The witness continued:

I knew of the decision of the court of appeals about the time it was announced.

The defendants' counsel then asked the following questions:

Q. Had you and M'r Barker, the president of your road, been actually engaged in trying to procure an enactment of a law legalizing these bonds?

(To which the plaintiffs' counsel objected as incompetent unless some notice of knowledge of same was brought home to plaintiff. The court sustained the objection and the defendants' counsel excepted to such ruling.)

Q. You and your directors of the R. R. Co. knew of the decision of the court of appeals immediately after it was made or very soon?

Ans. I cannot say as to the directors, a certain portion of them.

Q. Your president?

A. Yes, sir; & officers.

Q. That is what I mean. Now, M'r Biddlecom before you delivered those bonds to M'r Maynard, had you not consulted with other directors of your company & other persons on the subject of getting those bonds out of the State, as the only means of getting them prosecuted in the United States court?

(To which the plaintiffs' counsel objected, unless some notice or knowledge was brought home to the plaintiff, which objection was sustained by the court, and the defendants' counsel duly excepted to such ruling.)

299 The defendants' counsel thereupon offered to show that the witness and other directors of this company consulted with Maynard and others in reference to a disposition of these bonds, the object being to get them out of the State, that they might be sued in the United States court.

(To which offer of proof the plaintiffs' counsel objected as incompetent and immaterial; that it could not affect plaintiff unless he had some notice or knowledge of the same. The court sustained the objection, excluded the evidence, and the defendants' counsel duly excepted.)

Q. You knew before the bonds were issued of the pendency of the certiorari?

Ans. I did; the same as of other suits.

Q. State whether you or other directors employed counsel.

Ans. I don't know of the other directors; I did for the Clayton & Theresa Railroad Company to defend the certiorari in the supreme court.

On examination of witness by plaintiffs' counsel witness testified:

Q. Now, this paper refers to a contract with the Black River Railroad, and it speaks of these bonds as being deposited with the road as security for your company to perform that contract.

Ans. Yes, sir.

(The defendants' counsel here objected to any testimony about

300 the C. & T. Railroad or the building of it; which objection was overruled and the defendants' counsel duly excepted.)

The witness continued:

Our road made a contract with the Black River road as early as the 26 Feb'y, 1872. They were aiding in building the road. On the 31st of May, 1873, the C. & Theresa Railroad Company had failed to perform its part and made a supplemental contract. We had made default on the 31st May, and they wanted security and we gave them these bonds as security, and they made the second contract, giving further time.

EXHIBIT A.

Plaintiffs' Exhibit A.

The plaintiffs' counsel thereupon offered and read in evidence the contract between the Clayton & Theresa Railroad Company, and the Utica and Black River Railroad Company, dated the 26th day of February, 1873; and also the amendatory contract between the same parties, dated May 31, 1873, which were respectively in the words and figures following, viz:

It is agreed between the Clayton and Theresa Railroad Company, of the first part, and the Utica and Black River Railroad Company, of the second part, as follows, to wit:

The party of the first part agrees that it will build its railroad from, in the village of Clayton, to a point on the Black River and Morris-
301 town Railroad between the village of Philadelphia and Theresa as indicated on map and profile thereof on file in the office of the clerk of Jefferson County, copies whereof have been now exhibited to the party of the second part, and with no greater grades than is indicated and marked on said profile, and said road being about sixteen miles in length, and will make proper connexions with said Black River and Morristown road, and will build its said railroad as a first-class road, and subject to the approval from time to time of the engineer selected by the party of the second part or its superintendent; and the party of the first part will procure an unincumbered title in fee to the lands necessary for said road and the structures connected therewith, and will also furnish with such title, unincumbered, at the village of Clayton, at least eight hundred feet of river front, on the straight or northwesterly river front in said village, by one hundred feet wide, together with the wharves now built thereon, and not including in said eight hundred feet the river front on the cove or bay of said river on the northeasterly side of said village, which is also to be so procured and furnished as shown in said map. The said road shall be completed by or before the first day of June, 1873.

The party of the first part further agrees that the said road and premises shall not be mortgaged for a sum greater than seventy thousand dollars to aid in the construction of said road; and that said mortgage and the bonds issued thereunder shall be for a less sum if the said
302 road can reasonably be accomplished and built by the means of its stock subscriptions for less than said $76,000.00 of bonds; and further, that the interest on said mortgage and bonds shall be payable semi-annually on the first days of January and July in each year, and the principal shall be payable within twenty-five years, and at the time of consolidation hereinafter mentioned there shall be no other debt, lien, or charge or incumbrance upon said road and premises, and which the

as collateral security for the performance of the contract above mentioned.

A. F. BARKER,
Pres't of the Clayton & Theresa Railroad Company.
R. B. BIDDLECOM,
Sec'y & Treas. Clayton & Theresa R. R. Co.

298 The witness continued:

I knew of the decision of the court of appeals about the time it was announced.

The defendants' counsel then asked the following questions:

Q. Had you and M'r Barker, the president of your road, been actually engaged in trying to procure an enactment of a law legalizing these bonds?

(To which the plaintiffs' counsel objected as incompetent unless some notice of knowledge of same was brought home to plaintiff. The court sustained the objection and the defendants' counsel excepted to such ruling.)

Q. You and your directors of the R. R. Co. knew of the decision of the court of appeals immediately after it was made or very soon?

Ans. I cannot say as to the directors, a certain portion of them.

Q. Your president?

A. Yes, sir; & officers.

Q. That is what I mean. Now, M'r Biddlecom before you delivered those bonds to M'r Maynard, had you not consulted with other directors of your company & other persons on the subject of getting those bonds out of the State, as the only means of getting them prosecuted in the United States court?

(To which the plaintiffs' counsel objected, unless some notice or knowledge was brought home to the plaintiff, which objection was sustained by the court, and the defendants' counsel duly excepted to such ruling.)

299 The defendants' counsel thereupon offered to show that the witness and other directors of this company consulted with Maynard and others in reference to a disposition of these bonds, the object being to get them out of the State, that they might be sued in the United States court.

(To which offer of proof the plaintiffs' counsel objected as incompetent and immaterial; that it could not affect plaintiff unless he had some notice or knowledge of the same. The court sustained the objection, excluded the evidence, and the defendants' counsel duly excepted.)

Q. You knew before the bonds were issued of the pendency of the certiorari?

Ans. I did: the same as of other suits.

Q. State whether you or other directors employed counsel.

Ans. I don't know of the other directors; I did for the Clayton & Theresa Railroad Company to defend the certiorari in the supreme court.

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Q. Now, this paper refers to a contract with the Black River Railroad, and it speaks of these bonds as being deposited with the road as security for your company to perform that contract.

Ans. Yes, sir.

(The defendants' counsel here objected to any testimony about

300 the C. & T. Railroad or the building of it; which objection was overruled and the defendants' counsel duly excepted.)

The witness continued:

Our road made a contract with the Black River road as early as the 26 Feb'y, 1872. They were aiding in building the road. On the 31st of May, 1873, the C. & Theresa Railroad Company had failed to perform its part and made a supplemental contract. We had made default on the 31st May, and they wanted security and we gave them these bonds as security, and they made the second contract, giving further time.

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It is agreed between the Clayton and Theresa Railroad Company, of the first part, and the Utica and Black River Railroad Company, of the second part, as follows, to wit:

The party of the first part agrees that it will build its railroad from, in the village of Clayton, to a point on the Black River and Morris-
301 town Railroad between the village of Philadelphia and Theresa as indicated on map and profile thereof on file in the office of the clerk of Jefferson County, copies whereof have been now exhibited to the party of the second part, and with no greater grades than is indicated and marked on said profile, and said road being about sixteen miles in length, and will make proper connexions with said Black River and Morristown road, and will build its said railroad as a first-class road, and subject to the approval from time to time of the engineer selected by the party of the second part or its superintendent; and the party of the first part will procure an unincumbered title in fee to the lands necessary for said road and the structures connected therewith, and will also furnish with such title, unincumbered, at the village of Clayton, at least eight hundred feet of river front, on the straight or northwesterly river front in said village, by one hundred feet wide, together with the wharves now built thereon, and not including in said eight hundred feet the river front on the cove or bay of said river on the northeasterly side of said village, which is also to be so procured and furnished as shown in said map. The said road shall be completed by or before the first day of June, 1873.

The party of the first part further agrees that the said road and premises shall not be mortgaged for a sum greater than seventy thousand dollars to aid in the construction of said road; and that said mortgage and the bonds issued thereunder shall be for a less sum if the said
302 road can reasonably be accomplished and built by the means of its stock subscriptions for less than said $76,000.00 of bonds; and further, that the interest on said mortgage and bonds shall be payable semi-annually on the first days of January and July in each year, and the principal shall be payable within twenty-five years, and at the time of consolidation hereinafter mentioned there shall be no other debt, lien, or charge or incumbrance upon said road and premises, and which the

the corporation as so consolidated is to assume. And said party of the first part further agrees that when said road is so completed and approved as aforesaid it will take the necessary steps without delay to consolidate with the Utica and Black River Railroad Company, putting in its railroad and railroad property at the actual cost in cash, not exceeding the sum of eighteen thousand dollars per mile, and its capital stock to be consolidated and exchanged shall not exceed eighteen thousand dollars per mile, deducting therefrom the amount of said mortgage or mortgage bonds so issued as aforesaid, and will transfer and surrender said capital stock to the party of the second part for the purpose of being so consolidated and cancelled.

And the party of the second part agrees that on the completion and approval of the said railroad and structures as aforesaid, it will without delay take the necessary measures to consolidate the two com-
303 panies and roads as aforesaid, and will on the transfer and surrender of the stock of the parties of the first part, and the consolidation aforesaid, issue to the holders of the stock of the party of the first part an amount of stock of the Utica and Black River Railroad Company, consolidated as aforesaid, equal to the stock held by them in the company of the party of the first part, except that the party of the second part hereto will not issue fractions of a share, the shares being one hundred dollars, and except that the stock to be issued shall not exceed the cash cost of the road of the party of the first part, and its premises and structures, and also not exceeding eighteen thousand dollars per mile, less the amount of the said mortgage bonds aforesaid.

It is understood by the parties hereto that there is now an existing agreement between the party of the second part and the Black River and Morristown Railroad Company for consolidation of their companies.

The general width of the right of way for the railroad of the party of the first part so to be built shall not be less than four rods wide, and in cuts and embankments and places where more width may be necessary it shall be as much wider as the engineer or superintendent of the party of the second part shall determine to be necessary.

The iron rails shall be of a good brand, and equal to the Rome, Consett, or Rhyraney iron, and it shall be at least fifty-six pounds to
304 the lineal yard. Fish-plate iron with fish-plate bolts and spikes of an approved quality and brand. There shall not be less than 2,258 ties to the mile, of not less than 6 inches thick by 7 inches face, and bed and well ballasted for a first-class road. There may be ten per cent. of 6-inch ties faced. The fencing shall be good substantial post and board fence, except in the clay ground, where a good substantial worm rail fence six rails high, besides stakes and riders, said rails, to be of some desirable wood, may be used with the necessary farm crossings and gates or bars.

There shall be a depot at the junction with the Black River and Morristown Road, not less than 26 by 40 feet, and a frame wood-shed, 25 by 100 feet, and a good turntable 50 feet long, such as used on the road of the party of the second part of West Carthage, and a suitable water-house and the appliances therefor, as near said junction as practicable; another depot, not less than 26 by 60 feet at West Theresa, or near Orleans Four Corners; another depot not less than 26 by 80 feet at La Fargeville, with like wood sheds as above, and with sufficient and suitable land for each of said depots and structures pertaining thereto and for wood piling.

And there shall be another depot not less than 30 by 150 feet, at the village of Clayton, with the like wood-shed as above, also a brick or

stone engine-house with tin roof, and with stalls and pits for
305 three engines of the largest size, and on the road of the party of the second part a suitable water-house and its appliances, and a turntable as aforesaid, each of said turntables and said depots and structures to have suitable stone foundations.

And there shall be the necessary sidings or side-tracks, not less than 500 feet long at any place, and at Clayton there shall be two side-tracks at least 800 feet long each, and said road and structures shall be well and properly built in all respects for a first-class single-track road equal to the Utica & Black River Railroad.

In witness thereof this agreement is hereby signed by the committee appointed for this purpose by the respective board of directors of the two several companies parties hereto this 26th day of February, 1872.

THE CLAYTON & THERESA RAILROAD COMPANY,
By ALDEN F. BARKER,
JOHN JOHNSTON,
THO'S REES,
RUSSELL B. BIDDLECUM,
Committee.

THE UTICA & BLACK RIVER RAILROAD COMPANY,
By JOHN THORN,
E. A. GRAHAM,
DE WITT C. WEST,
Committee.

[Three 5-cent int. rev. stamps cancelled.]

306 PLAINTIFF'S EXHIBIT B.

It is agreed between the Clayton and Theresa Railroad Company of the first part, and the Utica and Black River Railroad Company of the second part as follows:

Whereas on the 26th day of February, 1872, an agreement was made between the parties hereto in relation to the building the Clayton and Theresa Railroad, and a consolidation of the said companies, and which agreement the party of the first part is unable to comply with and fulfill, and now seeks a modification thereof.

Now it is agreed by and between the said parties, that the said agreement shall be referred to as a part of this agreement, except so far as the same shall be changed and modified by this agreement, and it is mutually hereby agreed that said agreement shall be and is hereby changed and modified as follows, to wit:

The party of the first part may execute a first mortgage on its railroad and railroad premises and property, acquired and to be acquired to secure the payment of a sum not exceeding two hundred thousand dollars of bonds for the purpose of completing its road as specified in said agreement and ready for operation by the party of the second part. The principal and interest of said bonds so to be issued shall be payable in the city of New York; the principal within 25 years, and the interest semi-annually from the 1st day of July, 1873.

307 Said mortgage and the bonds shall be submitted to and approved by the party of the second part, and shall be in form, tenor, and effect like the second mortgage of the party of the second part, and shall be executed to Publius V. Rogers and Robert S. Williams, of Utica, as trustees for the holders of said bonds, and the same shall be made and executed by or before the first day of July, 1873.

Of the said two hundred thousand dollars of bonds, the sum of sixty

thousand dollars shall be taken and paid for by the citizens of the town of Clayton, at not less than ninety cents on the dollar of said bonds, and the sum of one hundred and forty thousand dollars of said bonds shall be taken and paid for by party of the second part hereto, at the same rate of ninety cents on the dollar, and said bonds shall be taken and paid for so as to complete the said railroad ready for operation by the party of the second part by or before the first day of August next; and the party of the second part shall be put in possession thereof as soon as the same shall be ready for operation, not later than said first day of August next. The party of the second part is to pay the interest on said two hundred thousand dollars of bonds. If within five years from the first day of July, 1873, the party of the first part shall pay off and take up and cancel one hundred thousand dollars of said bonds, then each of said parties shall take measures for consolidation as provided in said agreement, and upon such consolidation, the party of the second
308 part will issue to the party of the first part two thousand shares of one hundred dollars each of the consolidated stock of said company, provided all the capital stock of the Clayton and Theresa Railroad Company shall be surrendered and canceled. In case the said one hundred thousand dollars of the bonds shall not be by the party of the first part paid off, taken up, and cancelled in the time and manner provided for, then the party of the second part shall own, operate, and use the said Clayton and Theresa Railroad, and railroad property and appurtenances, and the same shall be by proper conveyances conveyed by the party of first part to the party of the second part, subject to the said mortgage and bonds of two hundred thousand dollars.

At the time of the completion of said railroad there shall be no other debt against the party of the first part, which shall be a lien, charge, or incumbrance, specific or otherwise, upon said railroad or railroad property and appurtenances, or any part thereof.

The party of the first part shall without delay furnish the party of the second part with an abstract from the Jefferson County clerk's office of its title-deeds, showing a title as provided for in said former agreement.

The party of the first part shall pay the party of the second part interest on advances they have made or shall make for the purpose of completing the said railroad before the 1st day of July, 1873, and the leasing and putting the party of the second part in possession
309 thereof, and any iron or other materials or things furnished and advanced by the party of the second part for completing said railroad shall be and remain the property of the party of the second part, and may, if need be, reclaimed, taken up, removed, and held by the party of the second part until this agreement is fully carried out in its provisions and until said mortgage is recorded and becomes the first debt, lien, charge, and incumbrance upon the said railroad & railroad property and appurtenances.

A lease shall be executed by the party of the first part to the party of the second part of said railroad, railroad property, and appurtenances for five years from the first day of July, 1873, at the rent equal to the interest on the said two hundred thousand dollars of bonds, to be paid to the holders of said bonds & coupons.

In witness whereof this agreement is signed and executed by the com-

mittees of the respective companies, parties hereto, this 31st day of May, 1873.

THE CLAYTON AND THERESA RAILROAD COMPANY,
(Signed) By ALDEN F. BARKER, *Pres.*,
RUNEL B. BIDDLECOM, *Sec. & Treas.*,
Committee.

THE UTICA & BLACK RIVER RAILROAD COMPANY,
(Signed) By JOHN THORN,
C. A. GRAHAM,
DE WITT C. WEST,
A. J. WILLIAMS, *Executive Committee.*

310 The plaintiff's counsel continued:

Ques. Is there now and was there then due the Black River Railroad Company a large amount under those contracts?

(To which the defendant's counsel objected on the ground that it was incompetent and immaterial, which objection the court overruled, and allowed the question to be answered; to which ruling the defendant's counsel duly excepted, and the witness answered.)

Ans. Yes, sir; which we have not been able to settle up yet.

On re-examination by the defendant's counsel the witness said:

Mr. Maynard, named in the paper, was the treasurer of the Utica & Black River road and one of the directors on the finance committee. All the business transacted between the two companies on the part of the Utica & Black River road was done by Graham and West; Graham principally, and Maynard & Thorne. Mr. Graham was the general attorney and counsellor of the company.

The defendant's counsel then asked the witness the following question:

Ques. Did Mr. Graham & Mr. Maynard participate with you in efforts to get these bonds legalized by the legislature, because of the reversal of the court of appeals?

(To which the plaintiff's counsel objected as incompetent and
311 immaterial, and the court sustained the objection and overruled the question, and the defendant's counsel duly excepted.)

The witness continued:

We had been talking from the date of the first contract about turning these bonds over to the Utica and Black River Railroad Company.

On re-examination by the plaintiff's counsel the witness continued:

We had been talking about giving them these bonds as security since the first contract. The negotiations on the part of the Utica & Black River road were generally by West & Thorn. Seldom had anything to do with Graham. He was at times there, but the talk was generally between ourselves and Mr. West & Thorn, and sometimes Maynard. The delivery of the bonds and the making of the agreement dated May 31, 1873, was at Bagg's Hotel, in Utica, before we finished the agreement. I don't know that the decision of the court of appeals was the subject of conversation on that occasion. I can't tell what was said about disposing of the bonds by Maynard. I don't recollect anything said. I won't swear there was not something said about disposing of those bonds to avoid the effect of the decision of the court of appeals.

Barker and I talked with those acting directors on the 31st of May, and a number of times before, on the subject. I talked with Graham once soon after the decision about the decision of the court of

312 appeals. I talked with Maynard in reference to the matter, and also with Mr. West, some time before the 31st of May. I have no recollection of talking with Thorn. Talked with no other of the directors with reference to the decision of the court of appeals. It was not an official but a personal interview I had.

Mr. West had some of these bonds and returned them to me, most of them before the decision of the court of appeals. He had made no advances on them. I sold some bonds in Lewis County. I paid them back the money. It is possible they came through West. I received some through a banker. I think the banker sent them to me and I paid him the money.

On re-examination by the plaintiff's counsel the witness said:

There never was any formal offer to me as an officer of this company to return this scrip and get the bonds. I don't dispute what Mr. Folts says, but I don't recollect it. I don't recollect any such offer.

On re-examination by defendant's counsel witness said:

If they had offered me that paper I should have recollected it. I don't recollect it. There is no account of it in my book. My office at La Fargeville was the office of the treasurer & secretary of the C. &. T. Railroad Company. All the directors of our railroad company were petitioners in these proceedings before the county judge.

313 ISAAC MAYNARD, a witness called and sworn for the defendant, testified: I was treasurer of the Utica and Black River Railroad Company in 1873, and have been for six or seven years. I am the Isaac Maynard mentioned in the writing given by Barker & Biddlecun for the sale of these bonds. I had heard before the receipt of these bonds under that agreement of the decision of the court of appeals with reference to the bonding proceedings. I had heard the rumor of the decision.

I went to Albany, in March or April, 1873, to see about the passage of an act to legalize town bonds generally, including these bonds. I did not go officially as an officer of the railroad company. Mr. Graham asked me to accompany him to Albany for this purpose. He has been the att'y & counsel of, and a director and member of the finance committee of, our R. R. company for years. I paid the expense of Graham and myself as treasurer of the railroad company out of the company funds. I want to qualify by stating that it was to be charged to the C. & T. Railroad Company. I was not acting in concert with the Clayton and Theresa folks—Barker & Biddlecun. Mr. Graham went down for them. My impression is that the treasurer of the other road said if Graham would go down he would pay his expenses, and I as treasurer paid those expenses. The other road did not pay me those
314 expenses afterwards. I had some Wilna bonds to legalize. There was no litigation about them. The legalization of these bonds here was the great object in going down.

I delivered these bonds to the plaintiff, Mr. Platt, and received from him four notes, one of which is not yet paid. It is in the bank at Utica. It has been there over a year in the treasurer's box of our company in which we keep our papers in the vault of the bank. It is now in the possession and custody of our railroad company. I received these notes on the 4th February, 1874. I never got them discounted. As they matured sent them down for collection, probably from five to ten days before the maturity. I sold the bonds to Platt for 60 cents on the dollar for the face of them and took 4 notes at 9, 12, 15, 18 months. I had been acquainted with Platt a long time and was occasionally in Chicago. I had perhaps seen M'r Platt two or three times within the year before

the sale of the bonds at his office. I always go to his office when I am there. M'r Platt's partner is a nephew of M'r Thorne, our director. I never had any talk with Platt's partner with reference to these bonds before talking with Platt.

(It was here admitted that the answer to complaint in this case and action was received by the plaintiff's attorney on the 10 Sept., 1874.)

On cross-examination the witness testified:

315 I did not go to Albany at the request of my company. It was at the time when an act legalizing generally all bonds that had been issued for value.

There was a large number of people there, saving-band people. M'r Swan, of Poughkeepsie, was there and others. I was with M'r Graham when he went before the committee. I never at any time before or at time of sale gave M'r Platt any notice, intimation or hint that there had ever been any question about these bonds. M'r Platt had been for many years a resident of Chicago.

The counsel for plaintiff then asked the question:

Ques. Was he a man of large property?

(To which the defendant's counsel objected as incompetent and immaterial. The objection was overruled by the court, and the defendant's counsel duly excepted, and the witness answered:)

Ans. I suppose he was. These notes are three of the notes for $10,000 each which he gave me at the time they bear date. They were paid in New York at maturity and put to our credit at bank.

The plaintiff's counsel then offered and read the three notes in evidence, which were in the words and figures following:

$10,000.] CHICAGO, ILL., *Feb'y 4th*, 1874.

Nine months after date I promise to pay to the order of Isaac Maynard, ten thousand dollars, at the Fourth Nat'l B'k, New York, with interest at seven per cent., value received.

N. E. PLATT.

(Endorsed:) Isaac Maynard. Isaac Maynard, treas.

316 $10,000.] CHICAGO, ILL., *Feb'y* 4, 1874.

Twelve months after date I promise to pay to the order of Isaac Maynard, ten thousand dollars at the Fourth Nat'l B'k, New York, with interest at seven per cent., value received.

N. E. PLATT.

(Endorsed:) Isaac Maynard. Isaac Maynard, treas.

$10,000.] CHICAGO, ILL., *Feb'y 4th*, 1874.

Fifteen months after date I promise to pay to the order of Isaac Maynard, ten thousand dollars, at the Fourth Nat'l B'k, New York, with interest at seven per cent., value received.

N. E. PLATT.

(Endorsed:) Isaac Maynard. Isaac Maynard, treas.

317 The money went to the credit of the Black River road, I suppose; the 4th note was for 12,090 and interest, payable in eighteen months, and otherwise in same form as above notes.

On examination by the defendant's counsel witness continued:

I made the arrangement with M'r Platt whereby he took these bonds.

I think he took them on the second interview with him on the subject. Both were on the same day at Chicago. I said to M'r Platt, I had some bonds for sale I thought could be bought so they would pay a man to carry them, or pay interest, or something of that effect. He asked me how they could be bought, and what bonds they were. I told him they were the Orleans town bonds. He asked where it was; I said in Jefferson County. I think he asked me then what they could be bought for, and on what terms, or something to that effect. I offered him the bonds at 60 cents and take his paper as stated. He said he would like to see one of the bonds. I gave him one; I called again. I stepped out of the office; I can't recollect exactly how that was. The second interview he said he would take the bonds. The second was perhaps an hour after the first interview. He said then that the bonds would pay and he would take them. This was in his office in Chicago. No one near us. Bookkeeper might have been in the room. Nothing else said.

318 We were engaged in the first interview 15 minutes, and half an hour in the second. I have stated in substance all that was said in these conversations. I have had no transaction before or since that of selling bonds. He did not enquire if the bonds were good; I did not state to him whether bonds were good or not. I did not tell him of the decision. He gave me the four notes at the same time I gave him the bonds.

The defendant then read in evidence the testimony of Edmund A. Graham, which had been taken under stipulation, which was in the words and figures following:

EDMUND A. GRAHAM, a witness called and examined on behalf of the defendant, testified as follows:

I reside at Utica. Have been a director of the Utica and Black River Railroad Company since its organization, and have been since its organization its attorney, and been a member of its finance and executive committee for a number of years. The first talk about these town of Orleans bonds that I remember was at the time of the making of the first contract, February, 1872, when there was talk of our company aiding to dispose of the Clayton & Theresa Railroad Company bonds, both their town bonds and their mortgage bonds. I think the subject was mentioned to me by R. B. Biddlecom after that, and before May, 1873, occasionally when we met—not more than twice. I drew

319 the contract of Feb'y 26, 1872, and May 31st, 1873, between the two companies.

Isaac Maynard, Barker, Biddlecome, and I went to Albany April 8, 1873, to see committee on railroad with view to get a bill favorably reported to confirm the validity of these town of Orleans bonds. About that time I heard about the decision of the court of appeals as to them—heard, I think, from M'r Biddlecom just before that.

Prior to the issue of the certiorari as to these bonds, I think it was, I was at the Woodruff House, at Watertown, and had a talk with M'r Levi H. Brown, in which M'r Brown stated that he intended to bring a certiorari as to these bonds, and stated the grounds to be that he thought the affidavit of the assessors was defective, and the assessment was void, and that I replied I thought the jurisdiction of the county judge not affected; that this could be supplied by evidence. I think that was before, but I am not positive, and I can't say certain that it was not pending the certiorari proceedings.

I am an attorney and counsellor-at-law in this State for upwards of thirty years.

Cross-examined by plaintiffs' counsel:

During late summer or the fall of 1872, I heard from M'r Biddlecom that the Clayton and Theresa road had issued to the town of Orleans stock for the $80,000.00 of bonds issued by the town to aid in building the road.

Redirect-examination:

I was in Jefferson County in year 1872, about 3 or 4 times.
320 Maynard, Thorne, West, and I transacted most of the negotiations between the companies as to these contracts in behalf of the Utica and Black River Railroad Company. Biddlecom, Barker & Reese acted for the Clayton and Theresa Railroad Company.

E. A. GRAHAM.

The defendants' counsel then read in evidence the testimony of De Witt C. West, taken under stipulation.

DE WITT C. WEST, being duly sworn and examined as a witness on the part of the defendant, says:

I reside at Lowville, and have been director of the Utica and Black-River Railroad since 1869, and a member of the finance and executive committee four years or more, and president since June, 1873, of that company. In 1872 and in 1873 the finance or executive committee were John Thorn, Edmund A. Graham, Russel Wheeler, A. J. Williams and myself. M'r Isaac Maynarg has been treasurer of the road for the past 5 years. Each member of the finance committee was a director.

Ques. State whether there was any, and, if so, what, action of the board of directors of finance committee in relation to placing in the hands of Isaac Maynard the bonds in controversy in this suit?

Ans. No formal action; I know of no record of any action by the finance committee. I know of the fact that the bonds were deliv-
321 ered to M'r Maynard to be sold. My best recollection is that the majority of the finance committee knew of it, but I am not sure. I think they knew and approved of the delivery of these bonds to M'r Maynard as security for the Utica & Black River Railroad Company, but there was no formal record of their action—no formal vote or record. It is not generally customary for us, as finance committee, to make a record or vote or action of the committee.

Ques. State whether you and other members of the finance committee, and which of them, in March, 1872, participated at Albany in efforts to procure the enactment of a law by the legislature of New York legalizing the bonds in question. (Objection by counsel by plaintiff to answer to this question, as incompetent and immaterial.)

Ans. I participated in trying to get a general law to legalize all town bonds issued in aid of railroads, and I did not in any other way. M'r Edmund A. Graham and I appeared before the committee. Neither of us made any argument before them. M'r Swan, not a director of or interested in our road, made an argument. This, I think, was not in March, but it was in May—fore part of May or last of April. It was before the senate committee. M'r Woodin argued the question against M'r Swan. This was the only time I appeared before the committee.

Ques. Were the bonds in question a portion of those desired to be legalized?

Ans. I suppose so; it was intended to legalize all bonds which
322 had been issued. M'r Barker, president, and M'r Biddlecom,

treasurer of the Clayton & Theresa Railroad Company, also were before the committee.

Ques. State when you were first apprised of proceedings for bonding of the town of Orleans to aid in constructing the Clayton & Theresa Railroad Company?

Ans. It was just previous to making the contract of February 26th, 1872, at time they opened negotiations with us to aid in building the road. Heard from Biddlecom & Barker there that the town had been bonded for $80,000.00, in aid of their road,—for building the road.

Ques. State, according to your best recollection, the date the negotiation first commenced between the two railroad companies for turning over to your company the bonds in question?

Ans. It was about the time negotiations were opened for the second contract dated May 31, 1873. M'r Biddlecom and M'r Barker both spoke to me about it. That I think was in May, 1873. I know it was previous to this contract. I think M'r Maynard was present, but I am not positive. I think M'r Thorn was also present. There were a number of talks about it.

Ques. Was there no proposition or negotiation between the two companies in reference to said bonds previous to May, 1873, or prior to the decision of the court of appeals in reference to those bonds in February, 1873?

Ans. I cannot tell because I was not president of the road then. None to my knowledge.

Ques. State whether previous to April, 1873, you knew there
323 was litigation in the courts in reference to the proceedings for bonding the town of Orleans?

Ans. I heard it immediately after the decision of the court of appeals as to them, that there had been litigation about the bonds, that I heard from M'r Biddlecom. I never heard before then that I recollect. Heard of it a number of weeks before the 1st of May, 1873. About time of first contract with our road the officers of the Clayton & Theresa Road talked with the officers of our road about our taking the bonds and selling them for them. Some of the bonds were delivered to me to sell, but I I did not sell them, and I returned them. My impression is, that one or two of those received were by me returned after the decision of the court of appeals, and the rest before. Between February, 1872, and May, 1873, Barker & Biddlecom spoke to me two or three times about selling these bonds. It may be oftener than that. I think M'r Maynard was present, but I am not sure about it. They addressed the conversation to me. One, and perhaps more of these conversations was at the office of our company in Utica. My best recollection is that it was the one at the office in Utica at which Maynard, according to my best impression, was present.

Ques. Do you recollect the reply that you or Maynard gave them?

Ans. The general reply was that we had our own bonds to
324 sell and could not take them. I cannot tell how long I kept the bonds that were sent to me. I kept them, according to my recollection, several months. I never knew of the litigation about them until M'r Biddlecom told me of it.

Ques. During year 1872, and early part of 1873, did you sell town bonds issued in aid of railroad companies?

Ans. Our company sold no town bonds at that time. When I said I never sold any of these bonds, I meant that some that I had sold were, as soon as I heard of the decision of the court of appeals, taken back by me and returned. I had sold, I think, 4 of them. I had interest in having town of Lowville bonds and the town of Wilna bonds legalized in

1873, when before this committee. There was no litigation about those town bonds. There were a great many people interested in having all the bonds theretofore issued confirmed. One object I had in trying to get the law passed was by legalizing these bonds, and the other bonds to aid the Clayton and Theresa Road in building this road.

Cross-examined by plaintiff's counsel:

This Clayton & Theresa Road was a connecting road with our road, and intended to be used with it. Previous to execution of the first contract they informed us that the town of Orleans had been bonded for
325 $80,000.00, to aid in building their road. They commenced building the Clayton & Theresa Road in 1872. It was first run in October, 1873. It was not then fully completed. We then took possession of it and completed it. It runs through the town of Orleans, I think, about six or seven miles right through the centre of the town, and is the only railroad in the town. There are two stations in the town of Orleans. At time we negotiated the second contract the Clayton & Theresa had failed to perform the first contract, and they proposed to leave these bonds with Maynard as security that they would perform the contract, and as I understood they were delivered to Maynard as security that they would perform the contract. I had been informed by Barker & Biddlecom before the second contract, and in 1872, that the Clayton Road had issued $80,000.00 of stock to the town of Orleans for these bonds.

Redirect examination:

The directors of our road who did the business with the Clayton Road were M'r Graham, M'r Maynard, M'r Thorn, & myself. They generally did the business for our road in the matters between the two roads.

DEWITT C. WEST.

326 The defendant's counsel then read in evidence the testimony of Nathan E. Platt, the plaintiff, taken under stipulation.

NATHAN E. PLATT being called and sworn for the defendants, before me, as a witness on the part of the defendants, did depose and say as follows:

I am 52 years old, and reside in Chicago, Cook County, Illinois. I am the plaintiff in this action. I have resided in Chicago about 14 years, this summer. I am of the firm of Platt & Thorn, commission merchants. I resided in the city of Utica, N. Y., prior to 17 years ago. I left there 17 years ago this summer. My partner's name is Edwin Thorn; he resides in Chicago, Illinois; he is a nephew of John Thorn, of the city of Utica. Edwin Thorn has resided in Chicago 16 or 12 years.

Ques. At what time and place did you first see the bonds mentioned in the complaint in this action?

Ans. About the 4th day of February, 1874, at my office, in Chicago, Illinois. They were produced by M'r Isaac Maynard, of Utica, New York, who brought them there. Previous to that time I had not corresponded with any one on the subject of the bonds by letter or otherwise. Previous to that time I had no communication with any one on the subject of the bonds. I received the bonds from M'r Maynard at that time; cannot say whether it was before M'r Maynard went out of the office
327 the first, the second, or the third time that I received the bonds from him. He was in and out two or three times, and I received them from him that day. I don't know as I can say whether I had only one or two or three conversations with M'r Maynard on the subject of these bonds that day. He always made it his headquarters at our office when in the

city. Maynard is no relative of mine. Maynard is a brother-in-law of John Thorn, and John Thorn is an uncle to Edwin Thorn, my partner, as I understand. I gave M'r Maynard notes, but there was no writing between Maynard and I as to these bonds, except the notes which I gave him. M'r Maynard produced no letters from any other person or persons as to the bonds on that occasion.

Ques. State the first conversation had between you and Maynard in relation to the bonds, giving as near as you can the language in which it occurred and the order.

Ans. The first that M'r Maynard said, I think, was, "Platt, I have got some bonds that I want to sell." I think I asked him what bonds they were. He said they were town of Orleans bonds. I asked him where the town of Orleans was. He said in Jefferson County, New York. I asked him what interest they were paying. He said 7 per cent. I says to him, "What are they worth?" He says they could be bought so as to pay a man a good rate of interest on them. I then asked him
328 about what they could be sold for, and if they were to be sold for cash. He said if I wanted to buy the bonds, he thought I could buy them and not pay much money right down. I think I then asked him in what way that could be arranged. He said he thought they could use my paper. Then we had some little conversation. The substance of it was that I got the impression that I could buy the bonds, giving my paper, and before I had to pay any of the paper I could realize on the bonds, and make some money out of the transaction. We then talked in reference to it some little time. I can't recollect particularly what was said, until he finally made me a proposition that he would sell me the bonds at sixty cents on the dollar, and take my paper at such time as I could meet it without difficulty. I think then that I asked to see one of the bonds. He showed me one of them. I read the bond over. I think then the conversation dropped, and that it was an hour or two before anything more was said. After that time I consummated the purchase of the bonds, after further talk about it. He proposed to take 4 notes in 9, 12, 15, and 18 months, with interest at 7 per cent., payable at Fourth National Bank in New York City. I told him I would take the bonds on those conditions. I made out the notes. The first three notes were made for ten thousand dollars and interest each, payable 9, 12, & 15 months after date, and the last note was twelve
329 thousand dollars and interest, payable in 18 months, each payable to the order of Isaac Maynard. I gave him those four notes in exchange for one hundred and forty bonds of $500 each, in amount $70,000. The coupons maturing the 15th of that month were on the bonds. I paid sixty cents on the face of the bonds, and got the bonds and coupons for it, and paid nothing on account of the coupons, except with the bonds. The first three coupons were cut off; all those that came due after that time were attached to the bonds. M'r Maynard did not endorse any of the bonds. He gave me no guaranty in writing of their payment. I have no guaranty or assurance of payment of these bonds from M'r Maynard or any one else.

Ques. State more particularly and fully what and all the talk by Maynard or you as to giving paper on time sufficient to collect the coupons.

Ans. There wasn't any. The impression I got from the conversation was that M'r Maynard could use the paper that I gave and get the money on it, although there was nothing exactly said about it. Maynard suggested no reason why he was willing to give so long time on the notes. He gave no particular reason why he was willing to sell them at a discount. He directed at what bank the notes be made payable. M'r May-

nard is at Chicago two or three times a year. He is interested in
330 firm of J. S. Kirk & Co., largest soap works in western country, and had business there. M'r Maynard is a man of large wealth; has half a million dollars in that soap works at Chicago, and large property in New York State besides.

Ques. Between the times of the first interview with Maynard referred to, and your exchanging your notes for these bonds, did you have or hear any talk with or by any other person than Maynard on the subject of the bonds or of the trade; and, if so, whom?

Ans. I did not hear any conversation, and did not have any conversation with any one. No one present at conversation between Maynard and I so as to hear it. M'r Maynard did not inform me whether he owned the bonds, nor whether the railroad company owned them. I inferred they belonged to the Utica & Black River Railroad Company, because I knew he was treasurer of that company. He did not inform me how the railroad company got them. I did not inquire, and he did not tell me how or when the railroad company got them. I did not ask him, and I had no knowledge before the purchase of how this railroad company came into possession of these bonds. I had no knowledge then as to the relations existing between the Utica & Black River Railroad Co. and the Clayton and Theresa Railroad Company.

Ques. Are you certain that Maynard did not inform you, and
331 you did not inquire anything as to why the railroad company wished to exchange these bonds for notes at so long a time and at so great a discount?

Ans. I am certain.

Ques. Had you at that time any information as to what price bonds of the character of these were selling at in the State *of* city of New York?

Ans. No, sir; I hadn't, I made no inquiry on that subject. I do not know who, except Thorn & Maynard, that are directorsof the Utica and Black River Railroad Company. I understood several men of wealth, residing in Utica, were directors in the Utica & Black River Railroad Company, or interested in the road. I had heard it from John Thorn when he was president of the road, some 2 or 3 years ago. Have heard nothing as to it since then. M'r Maynard gave no reason to me for coming to Chicago to sell the bonds, or why they were not sold in New York State, nor did I inquire why. Previous to the purchase of these bonds I had no suits in United States courts upon any town, village, or city bonds.

On examination by plaintiff's counsel witness deposed:

Those notes were paid at maturity by me. The notes shown me are three of the four notes. These three notes marked "A," "B,"
332 "C," and copies of same, appear above in testimony of Isaac Maynard. I had no notice in any way that the prior coupons had not been paid. Up to this time I supposed they had then been paid. The coupons from bonds were sent forward in February, 1874, to be presented for payment, and came back protested for non-payment. I have not sent coupons on that came due after suit was commenced in July, 1874. I had no notice, intimation, or knowledge that there was anything wrong about those bonds when I bought them *them* or any defence to or against them.

Ques. Did you purchase them in good faith?

(To which the defendant's counsel objected as incompetent. The court overruled the objection, and allowed the answer following to be read,

to which ruling and receipt of evidence the defendant's counsel duly excepted.)

Ans. I did purchase them in good faith. The note that is not due is still outstanding. At that time firm of Platt & Thorn were commission merchants for sale of pig-iron. We also sold flour and grain. Have two warehouses for flour & grain. This purchase was my individual matter. M'r Thorn had nothing to do with it. Our firm had exchanged iron for bonds. The firm had dealt in bonds before that time. We bought $120,000.00 of the Chicago & Northwestern consolidated gold-coupon bonds about that time.

In answer to defendants' counsel on re-examination, witness deposed:

333 Before commencing this suit, I did not write to M'r Maynard nor to any of the Utica & Black River Railroad Company's officers in reference to it. I sent the matter to M'r Kernan, because I knew him by reputation and recollected him. I have no indemnity from any one as to them. I had not been in the habit of buying bonds before this on my individual account, but had bought notes, bonds, and mortgages alone.

NATHAN E. PLATT.

Subscribed and sworn before me this 25 day of May, 1875.

CHARLES MASON,
U. States Com'r, North. Dist. of New York.

334 The plaintiff's counsel called NATHAN E. PLATT, the plaintiff, as a witness on his own behalf, who testified:

I lived in Utica and went from Utica to Chicago, 12 years ago. I knew M'r Kernan, my counsel, then; before or at the time I bought these bonds, I had not the least idea from any quarter there ever had been any legal proceedings, any certiorari, or anything else with reference to these bonds. I had no hint that there was any question about them in this State. M'r Maynard came to Chicago 3 or 4 times a year and had business connexions there. He was a well-known man there.

It was agreed that the defendant's answer to plaintiff's complaint should be considered in evidence and read as showing notice of its contents to plaintiff.

The proofs were here closed.

The counsel for the defendant insisted and asked the court to direct a verdict for the defendant on each of the following grounds separately:

1st. It appears upon the undisputed evidence that the plaintiff had not paid a dollar for these bonds until November, 1874, and that the answer of defendant in this case (which is on file) and regarded in evidence was served on the 10th of September, 1874, upon his attorney, which gave him full notice of the defence in this case, which was notice to the plaintiff and deprives him of all claim to be an innocent or bona
335 fide holder or purchaser of the bonds in question.

The court refused to rule and direct a verdict as so requested for defendant; and to such refusal the counsel for defendant then and there duly excepted.

The counsel for the defendant then insisted and asked the court to direct a verdict for defendant on each of the following grounds separately:

1st. That the proceedings for the bonding the town of Orleans, and the decision of the county judge upon the same having been reversed and the whole proceedings set aside and adjudged void, the bonds on which this action is brought were issued without authority of law and are null and void.

2d. That inasmuch as the writ of certiorari to review the judgment of the county judge was served before the issuing of these bonds and was pending and undetermined when the bonds were issued and was subsequently prosecuted to final judgment, declared the whole proceedings to bond the town of Orleans void, the bonds were illegally issued, and are null and void, and the plaintiff, although he be a bona fide holder, could acquire no right or title to them.

3d. That when the writ of certiorari was served and return made there was no longer any judgment on file; in contemplation of
336 law that judgment and the whole proceeding was taken bodily out of the clerk's office into the higher court, and is deemed unfinished, and is to be completed in the higher court. There is no record then and no authority there for the issue of these bonds. There is an utter want of power on the part of anybody to issue these bonds.

4th. That these proceedings to bond the town of Orleans was under the general bonding act of the State of New York, passed in 1869, and while it was in full force. On a petition drawn in conformity to that act, signed by a class of petitioners who were authorized to petition under that act, the proceedings remained unfinished and pending before the county judge when the amendatory act of the legislature of the State of New York, passed in 1871, took effect, and was completed afterwards, continuing the same proceedings commenced under the act of 1869 under the act of 1871. The proceedings are therefore void and the proceedings thus commenced could not be complete under the act of 1871, as the petition did not conform to the act of 1871.

5th. That the act of 1871 operated as a repeal of section one of the acts of 1869 which gave the county judge jurisdiction, and put
337 an end to the whole proceedings before the county judge, and all the subsequent proceedings were void.

6th. That the Utica & Black River Railroad Company was bound—was chargeable at the time of the delivery of the bonds, to wit—to Maynard, with notice of the proceedings as they appeared on the record, including the reversal of the decision of the county judge, showing he never had the jurisdiction to make the order and judgment.

7th. That Maynard was chargeable with notice in the same manner.

8th. That the plaintiff was chargeable with notice in the same manner by the record, and that thereupon and thereby he had notice there never existed any authority to issue these bonds.

9th. That the Clayton & Theresa Railroad Company had actual notice of the issuing of the bonds pending the writ of certiorari, and the bonds were therefore in their hands utterly void.

10th. That the Utica and Black River Railroad Company, by the notice proved to Maynard & West & Graham, had actual notice sufficient to charge them with full notice of the illegality of these
338 bonds, that they were issued without authority and are void, and of the reversal of the judgment of the county judge by the court of appeals.

11th. That the acts of the legislature of the State of New York, under which the said proceedings for the bonding of the town of Orleans, and under the proceedings of which those bonds are claimed to be issued,

are unconstitutional and void—as being contrary to the provisions of the constitution of the State of New York.

12th. That inasmuch as the authority to issue these bonds rested entirely upon the adjudication and proceedings on record in the clerk's office, the plaintiff and all other parties dealing with these bonds were bound to inquire and look for that authority, and, on looking, the evidence shows there was none, and therefore the plaintiff and all others had notice the bonds were issued without authority, and are void.

The court refused to direct a verdict in favor of the defendant upon the aforesaid grounds or requests, or upon either of them; to which refusal the counsel for the defendant then and there excepted.

The counsel for the defendant then insisted, that inasmuch as the proof shows that these bonds were illegally issued, and hence the legal presumption is against the plaintiff, and the whole burden of
339 proof is upon him, the proof is not sufficient for the court to decide as matter of law that the railroad companies or plaintiffs are bona fide holders of said bonds. That a wilful and negligent avoidance of inquiry on the part of the plaintiff, or a wilful keeping himself ignorant on the part of the plaintiff, was equivalent to a notice of the defects in said bonds, and thereupon asked the court to so rule and direct the jury, and to submit to the jury the following questions or propositions, to wit:

1. Whether either or both of the said railroad companies, the Clayton & Theresa Railroad Company, and the Utica and Black River Railroad Company, were bona fide holders of said bonds.

2d. Whether the plaintiff is a bona fide holder of said bonds.

The court refused to rule or direct the jury as requested by said several requests of the defendant's counsel, and refused to submit the said several questions or propositions to the jury as requested; to which said several rulings and refusal to rule and refusal to submit the said question or proposition to the jury, and to each thereof, the defendant's counsel then and there duly excepted.

And thereupon the said court directed the jury to render a ver-
340 dict in favor of the plaintiff against the defendant for $7,776.43.

To which order and direction of the court the counsel for the defendant then and there duly excepted.

And thereupon the jury, under and in pursuance to the said direction of the court, rendered a verdict in favor of the plaintiff against the defendant for $7,776.43.

And because none of the said exceptions so offered and made to the rulings and decision of said judge do appear upon the record of said trial, thereupon, on the prayer of the said defendant by its counsel, the said judge hath settled, signed, and sealed this bill of exceptions according to law and the practice of this court, the day and year above named.

[L. S.] W'M J. WALLACE,
U. S. District Judge.

341 (Endorsed:) U. S. circuit court north. dist. of N. Y. Nathan E. Platt vs. The Town of Orleans. Bill of exceptions. Filed March 24, 1876.

342 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the second circuit and northern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Nathan E. Platt, plaintiff, and The Town of Orleans, defendant, a manifest error hath happened, to the great damage of the said Town of Orleans, defendant, as by its complaint appears, we, being willing that error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
343 States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] CHARLES MASON,
Clerk U. S. Circuit Court, Northern District of New York.

Allowed by—

ALEX. S. JOHNSON,
U. S. Cir. J.

344, 345 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Nathan E. Platt, def't in error, vs. Town of Orleans, pl'ff in error. Writ of error. Levi H. Brown, att'y for pl'ff in error. Filed M'ch 24, 1876.

346 Know all men by these presents that we, Cornelius Bort and Thomas Lee, farmers of the town of Orleans, in the county of Jefferson, in the northern district of the State of New York, are firmly bound unto Nathan E. Platt, of the city of Chicago, in the State of Illinois, in the full and just sum of twenty thousand dollars, to be paid to the said Nathan E. Platt, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately, to wit, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-six, in a suit depending in the United States circuit court of the second circuit and northern district of New York, between the said Nathan E. Platt as plaintiff, and the said The Town of Orleans as defendant, judgment was rendered in favor of the said plaintiff, and against the said defendant.

The Town of Orleans, for the sum of eight thousand three hundred
347 and fifty dollars and twenty-two cents, damages and costs; and the said defendant therein, The Town of Orleans, having obtained a writ of error to reverse the aforesaid judgment rendered in the said circuit court, and having filed a copy thereof in the clerk's office of the

said circuit court, and having obtained a citation directed to the said Nathan E. Platt, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden on the second Monday of October next at Washington:

Now, the condition of the above obligation is such that if the said The Town of Orleans shall prosecute the said writ of error to effect, and answer all damages and costs, if the said The Town of Orleans shall fail to make its plea good, then this obligation to be void, else to remain in full force and virtue.

CORNELIUS BORT. [L. S.]
THOMAS LEE. [L. S.]

Sealed and delivered in presence of—

NORTHERN DISTRICT OF NEW YORK,
County of Oneida, ss:

Cornelius Bort and Thomas Lee, being duly severally sworn, each for himself says, the said Cornelius Bort, that he is a freeholder of the county of Jefferson, in the State of New York, and is worth, in
348 property not exempt from execution, the sum of $25,000, over and above all debts and responsibilities, which he owes or has incurred; and the said Thomas Lee, for himself, says that he is a freeholder in the county of Jefferson, in the State of New York, and is worth, in property not exempt from execution, the sum of $18,000, over and above all debts and responsibilities, which he owes or has incurred.

CORNELIUS BORT.
THOMAS LEE.

Severally sworn to and subscribed before me this 24th day of March, 1876.

ALEX. S. JOHNSON,
U. S. Cir. J.

Bond approved by—

ALEX. S. JOHNSON,
U. S. Cir. J.

NORTHERN DISTRICT OF NEW YORK,
County of Oneida, ss:

On this 24th day of March, 1876, before me, the subscriber, personally came Cornelius Bort and Thomas Lee, to me personally known to be the same persons described in who executed the within bond, and they severally duly acknowledged the execution thereof.

ALEX. S. JOHNSON,
U. S. Cir. J.

349 (Indorsed:) Cornelius Bort and to Nathan E. Platt.
Copy. Bond. Filed March 24, 1876.

350 The United States of America to Nathan E. Platt, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the second circuit and northern district of New York, wherein the Town of Orleans is plaintiff and you are defendant in error, to show cause, if any there be why the judgment rendered against the said plaintiff in error, as in the

said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable A. S. Johnson, circuit judge of the second circuit in northern district of New York, this 24th day of March, in the year of our Lord one thousand eight hundred & seventy-six.

ALEX. S. JOHNSON
U. S. Cir J.

351, 352 Personal service of within citation is hereby admitted this 24th day of March, 1876, at Utica, N. Y.

U. & J. D. KERNAN,
Att'ys for Defendant in Error.

353 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Nathan E. Platt, def't in error, vs. Town of Orleans, pl'ff in error. Citation. Filed M'ch 24, 1876.

354 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Nathan E. Platt vs. The Town of Orleans.

In testimony whereof I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Utica, in said district, this 7th day of September, A. D. 1876.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 176. The Town of Orleans, plaintiff in error, v. Nathan E. Platt. N. New York C. C. U. S. Filed 2d October, 1876.

IN SUPREME COURT

OF THE UNITED STATES.

THE TOWN OF ORLEANS,
Plaintiff in Error.

vs.

NATHAN E. PLATT,
Defendant in Error.

Writ of Error to the Second Circuit Northern District of New York.

STATEMENT OF CASE.

This case arises upon the return to a Writ of Error issued out of this Court to the U. S. Circuit Court of the Second Circuit, Northern District of New York. The action was tried at a term of the Circuit Court held at Canandaigua, in said District, on the 15th day of June, 1875, by and before the Hon. W. J. Wallace, Judge, and a jury. Record, p. 80.

The declaration or complaint is in Record, pp. 1 to 76, as amended under order of the Court, found at p. 74 of

Record, fol 50, and therein plaintiff claimed to recover the amount claimed due on interest coupons attached to 140 bonds of $500 each, being the sum of $2,450, falling due on February 15, 1874; and $2,450 August 15, 1874; and $2,450 February 15, 1875; aggregating $7,350, together with interest on each installment from time it fell due. Record, p. 75.

The answer is found in Record, pp. 76 to 79. On trial the Court directed a verdict for plaintiff for $7,776.43. Record, p. 200, to which direction defendant duly excepted, and judgment was entered on said verdict March 22, 1876, for $7,776.43 damages and $573.79 costs. Record, p. 82.

By Chap. 907 of the Laws of the State of New York, passed in 1869, entitled "An Act to amend an act to authorize the formation of Railroad Corporations, and to regulate the same, passed April 2, 1850, so as to permit Municipal Corporations to aid in the construction of railroads," it was enacted as follows:

"SECTION 1. Whenever a majority of the tax-payers of "any municipal corporation in this State, whose names "appear upon the last preceding tax list or assessment roll "of said corporation as owning or representing a majori- "ty of the taxable property in the corporate limits of "such corporation, shall make application to the county "judge of the county in which said corporation is situated, "by petition verified by one of the petitioners setting "forth that they are such a majority of taxpayers and "represent such a majority of taxable property, and that "they desire that such municipal corporation shall create "and issue its bonds to an amount named in such peti- "tion (but not to exceed twenty per cent. of the whole "amount of taxable property as shown by said tax list "and assessment roll) and invest the same or the proceeds "thereof in stock or bonds (as said petition may direct) of

" such railroad company in this State as may be named in
" said petition it shall be the duty of said county Judge
" to order that a notice shall be forthwith published in
" some newspaper in such county, or if there be no news-
" paper published in said county, then in some newspa-
" per printed in an adjoining county, directed to whom it
" may concern, setting forth that, on a day therein nam-
" ed, which shall not be less than ten days nor more than
" thirty days from the date of such publication, he will
" proceed to take proof of the facts set forth in said peti-
" tion as to the number of taxpayers joining in such peti-
" tion, and as to the amount of taxable property represen-
" ted by them. And any solvent, moneyed manufacturing
" or other corporation or company formed under the laws
" of this State, and being assessed on real or personal prop-
" erty therein shall have all the rights and privileges un-
" der this act so far as property representation is concern-
" ed, as other taxpayers and the board of directors or
" trustees of any such corporation or company may ap-
" ply to the county Judge by petition in the same man-
" ner as herein provided, for other taxpayers. The words
" 'municipal corporation,' when used in this act, shall be
" construed to mean any city, town or incorporated vil-
" lage in this State. But nothing herein contained shall
" be construed as to include the cities or counties of New
" York, Kings, Erie, Greene, Albany, Westchester, Onta-
" rio, Seneca, Yates, Onondaga and Niagara.

" § 2. It shall be the duty of the said judge at the
" time and place named in the said notice, to proceed to
" take proof as to the said allegations in said petition,
" and if it shall appear satisfactorily to him that the said
" petitioners and such other taxpayers of said town as
" may then and there appear before him and express a
" desire to join as petitioners in said petition, do repre-
" sent a majority of the taxpayers of said municipal cor-

" poration as shown by the last preceding tax list or assess-
" ment roll, and do represent a majority of the taxable
" property upon said list or roll, he shall so adjudge and
" determine and cause the same to be entered of record.
" And such judgment and the record thereof, shall have
" the same force and effect as other judgments and rec-
" ords in courts of record in this State.

" § 3. If the said judge shall adjudge and determine
" that such petitioners do represent a majority of such tax-
" payers as aforesaid, and a majority of such taxable prop-
" erty as aforesaid, it shall be his duty forthwith to ap-
" point and commission three persons who shall be free-
" holders, residents and taxpayers within the corporate
" limits of such corporation, to be commissioners for the
" purposes hereinafter named. * * *

" § 4. It shall be the duty of such commissioner, with
" all reasonable despatch, to cause to be made and exe-
" cuted the bonds of such municipal corporation, attested
" by the seal of such corporation affixed thereto, if such
" corporation has a common seal, and if not, then by
" their individual seals, and signed and certified by said
" commissioners, who are hereby authorized and empow-
" ered to affix such common seal thereto, and to so
" sign and certify such bonds. Such bonds shall be-
" come due and payable at the expiration of thirty years
" from their date, and shall bear interest at the rate of
" seven per cent. per annum, payable semi-annually, and
" shall not exceed in amount twenty per cent. of the en-
" tire taxable property within the bounds of said municipal
" corporation as shown by said tax list, nor shall they
" exceed in amount the amount set forth in such petition.
" The said bonds shall also bear interest warrants corres-
" ponding in number and amounts with the several pay-
" ments of interest to become due thereon. * * *

"§ 5. Such commissioners are further empowered and "directed to subscribe in the name of the municipal cor- "poration which they represent to the stock or bonds of "the railroad company named in such petition (as the pe- "tition may direct), to an amount equal to the amount "of bonds so created by them and to pay for the same by "exchanging the said bonds therefor at par; or they may, "at their discretion, sell and dispose of the said munici- "pal corporation bonds so created by them at rates not less "than par; and invest the proceeds thereof in such stock "or bonds of such railroad company as may be directed "in said petition. They shall represent either in person "or by proxy, such municipal corporation at all meetings "of such railroad bondholders or stockholders. * * *

"§ 8. The bonds of any municipal corporation which "may be issued under the provisions of this act shall be "registered in the office of the County Clerk of the coun- "ty in which such corporation is situated, and shall have "the words 'registered in the County Clerk's office' writ- "ten or printed upon them attested by the official seal of "said clerk; and said clerk shall receive for each such at- "testation the sum of twenty cents."

Section 4 of the act of 1869 was amended by chapter 283 of the laws of said State passed April 4, 1871, taking effect immediately in portions of it not given above but re-enacting the portion above set forth.

By chapter 925 of the laws of said State of New York, passed May 12, 1871, taking effect immediately, chapter 907 of the laws of 1869 was amended as follows:

Section one to read as follows:

"SECTION 1. Whenever a majority of the taxpayers "of any municipal corporation in this State who "are taxed or assessed for property, not includ- "ing those taxed for dogs or highway tax only, "upon the last preceding assessment roll or tax "list of said corporation, and who are assessed or

" taxed, or represent a majority of the taxable proper-
" ty, upon said last assessment roll or tax list, shall make
" application to the county judge of the county in which
" such municipal corporation is situate, by petition, veri-
" fied by one of the petitioners, setting forth that they
" are such majority of taxpayers and are taxed or assessed
" for, or represent such a majority of taxable property,
" and that they desire that such municipal corporation
" shall create and issue its bonds to an amount named in
" such petition, and invest the same, or the proceeds there-
" of, in the stock or bonds (as said petition may direct) of
" such railroad company in this State as may be named in
" said petition, it shall be the duty of said county judge
" to order that a notice shall be forthwith published in
" some newspaper in such county, or, if there be no news-
" paper published in said county, then in some newspaper
" printed in an adjoining county, directed to whom it may
" concern, setting forth that on a day therein named,
" which shall not be less than than ten days nor more
" thirty days from the date of such publication, he
" will proceed to take proof of the facts set forth in said
" petition, as to the number of taxpayers joining in such
" petition, and as to the amount of taxable property rep-
" resented by them. Any solvent corporation or com-
" pany assessed or taxed on said last assessment roll
" or tax list may join in such petition, and shall
" have all the rights and privileges under this act as other
" taxpayers. Any person, partnership or corporation
" upon whom it shall have been intended to levy a tax by
" virtue of said last assessment list and tax roll, under
" whatever name, and who shall have paid or are liable to
" pay such tax thus intended to be assessed and levied,
" shall be a taxpayer, entitled to represent the property thus
" taxed, and as such entitled to all the rights and privil-
" eges of this act. The petition authorized by this section
" may be absolute or conditional, and if the same be con-

"ditional the acceptance of a subscription founded on "such petition shall bind the railroad company accepting "the same to the observance of the condition or condi- "tions specified in such petition; provided, however, "that non-compliance with any condition inserted in such "petition shall not in any manner invalidate the bonds "created and issued in pursuance of such petition. No "municipal corporation, shall issue its bonds under the "provisions of this act for a greater amount than twenty "per centum of the taxable property thereof as appears "on its said last assessment list or tax-roll. The words "mu- "nicipal corporation" when used in this act shall be con- "strued to mean any city, town, or incorporated village "in this State, and the word "taxpayer" shall mean any "corportion or person assessed or taxed for property, "either individually or as agent, trustee, guardian, execu- "tor or administrator, or who shall have been intended "to have been thus taxed, and shall have paid or are "liable to pay the tax as hereinbefore provided, or the "owner of any non-resident lands, taxed as such, not in- "cluding those taxed for dogs, or highway tax only, and "the words 'tax list or assessment roll' when used in this "act shall mean the tax list or assessment roll of said "municipal corporation last completed before the first "presentation of such petition to the judge. But "nothing herein contained shall be construed so as to in- "indicate the city of New York or the counties of New "York, Kings, Erie, Westchester, Onondaga and the "town of Royalton in the county of Niagara, within the "provision of this act.

Section two to read as follows:

"§ 2. It shall be the duty of the said judge at the time "and place named in the said notice to proceed and take "proof as to the said allegations in said petition, and if "it shall appear satisfactorily to him that the said peti-

" tioners, or the said petitioners and such other taxpay-
" ers of said municipal corporation as may then and there
" appear before him and express a desire to join as peti-
" tioners in said petition, do represent a majority of the
" tax-payers in said municipal corporation as shown by
" the last preceding tax list or assessment roll, and do
" represent a majority of the taxable property upon said
" list or roll, he shall so adjudge and determine, and
" cause the same to be entered of record in the office of
" the clerk of the county in which said mudicipal corpo-
" ration is situated, and such judgment and the record
" thereof shall have the same force and effect as other
" judgments and records in courts of record in this State.
" * * * The judge shall file the petition as part of
" the judgment roll, and on making his final determina-
" tion in any case, he shall forthwith publish notice
" thereof for three weeks, at least once in each week, in
" the same newspaper in which notice of such hearing
" was published as ordered."

Section four enacts portion not contained in law of 1869, as follows:

"§ 4. Review of proceedings under the acts hereby
" amended shall be by certiorari, and no writ of certiorari
" shall be allowed unless said writ shall be allowed within
" sixty days after the last publication of notice of the
" judge's final determination, as provided in section two
" of this act, and where such judgment is so entered prior
" to the passage of this act, unless said writ is allow-
" ed within sixty days after the passage of this act. On
" the return of the certiorari the court out of which the
" same issued shall proceed to consider the matter
" brought up thereby, and shall review all questions of law
" and of fact determined for or against either party by the
" county judge. And the said courts or Court of Appeals
" in appeals now pending, and in all future proceed-

"ings, may reverse or affirm or modify, in all questions of "law or fact, his final determination, or may remand "the whole matter back to said county judge to be again "heard and determined by him, and it may by order di- "rect that he proceed thereon *de novo*, in the same man- "ner and with the same effect as if he had taken no ac- "tion therein or it may by such order specify how and in "what particulars he shall hear and determine the same "on such remanding thereof. Applications for certiorari "shall be on notice. On review, persons taxed for "dogs or highway tax only shall not be counted as tax- "payers unless that claim was made before the county "judge. The county judge shall forthwith proceed to "carry into effect all orders of any court on review under "this act."

Section six amends section four of the law of 1869, by adding thereto as follows:

"§ 6. In case of a vacancy in the office of commission- "ers, or in case all commissioners are notified of any "meeting, a majority of the commissioners shall have "and exercise all the powers and duties of the three "commissioners. The said commissioners may issue the "said bonds payable at any time they may elect, less than "thirty years, any law heretofore passed to the contrary, "but they shall not so issue said bonds that more than "ten per cent. of the principal of the whole amount of "bonds issued shall become due or payable in any one "year."

"§ 7. This act shall take effect immediately."

The Statute of the State of New York, being as above set forth, Russel B. Biddlecom, Simon Fults, George H. Strough, Samuel W. Gates, (record, page 102) and others, taxpayers and residents of the town of Orleans, one of the towns of the county of Jefferson in the State of New

York, in the northern district of New York, on the 12th day of May, 1871, caused a petition to be presented to the County Judge of the said county of Jefferson, praying that commissioners might be appointed for the purpose of executing bonds of said town to the amount of $80,000, to be used in aid of the Clayton & Theresa railroad company, (Record, page 86); on the 12 day of May, 1871, an order was made by said County Judge directing notice to be published that on the 5th day of June, 1871, he would proceed to take the proof of the facts set forth in the said petition, as to the number of taxpayers joining in said petition, and as to the amount of taxable property represented by them, (Record, p. 91.) Such notice was duly published. (pages 91–92.)

On the said 5th day of June, 1871, the said Russel B. Biddlecom and other petitioners appeared before the said Judge with their counsel in favor of said petition, and certain others of the taxpayers of the said town of Orleans appeared also with their counsel to oppose the prayer of said petition, objected to the same, and testimony was taken before the said County Judge as to the facts stated in said petition, (Record, pages 127, 171.)

On the 1st day of July 1871, the said County Judge made his decision in said matter whereby he decided that the petitioners represented a majority of the taxpayers of said town and a majority of the taxable property of said town as made by the last assessment roll of said town and appointed three of the petitioners to wit: George H. Strough, Samuel W. Gates and Simon Fults commissioners for said town with the powers and for the purposes provided in and by said chapter 907 of the laws of 1869, and the various acts amendatory thereof, and that a commission do issue to them accordingly. Record page 95, 123, which decision was entered in the clerk's office of the said county of Jefferson on the 3d day of July 1871. Record page 96, 125.

On the said 1st day of July, 1871, the said county judge made and signed a commission to said Strough. Gates and Fults, authorizing them to issue the bonds of said town to the amount of $80,000, and to invest the same, or the proceeds, in the stock of the Clayton & Theresa Railroad Company. Record, p. 94.

Said county Judge caused notice of his said final determination to be published three weeks as required in section 2, of chapter 925 of laws of 1871, commencing July 6, 1871. Record page 97.

On the 25th day of July, 1871, the said Strough, Gates and Fults, took the oath of office prescribed in said acts. Record, pp. 94–95.

Within the time prescribed by the aforesaid act of 1871, sec. 4, application was made by the contestants to the Supreme Court of the State of New York on notice served eight days before then for a writ of certiorari to review the said proceedings, and on the 12th day of September, 1871, at a Special Term of said Supreme Court an order was made ordering such certiorari to issue. Record, p. 103. Such certiorari was duly issued and served on the 14th October, 1871. Record, p. 106.

On the 22d December, 1871, a return to such certiorari was made by the clerk of the County of Jefferson, Record, p. 107, and on the 27th of December, 1871, by the said County Judge, Record, p. 126, which return contained the proceedings and orders had in the said matter.

The certiorari was duly brought to argument at a General Term of the said Supreme Court, in and for the Fourth Judicial Department of the State of New York, and on the 20th day of June, 1872, the judgment and determination of the County Judge was affirmed, (Record p. 178) and on the 1st day of July, 1872, a judgment of affirmance was duly entered by the clerk of said court. Record, p. 178.

From this last mentioned judgment the contestants on the 10th day of July, 1872, duly appealed to the Court of Appeals of the said State of New York, Record, p. 105, and such proceedings were thereupon had in the said Court of Appeals, that on the 24th day of February, 1873, the said judgment of the said Supreme Court, and the order aforesaid of the County Judge appointing said commissioners was reversed, and the proceedings dismissed. Record, p. 104.

The case in Court of Appeals is reported in 52 N. Y. R. 296.

On the 19th of March, 1873, an order was made at Special Term of the said Supreme Court, making the said judgment of the said Court of Appeals, the judgment of the said Supreme Court. (Record, p. 181.)

The attorney and counsel who acted for the petitioners and who appeared to oppose the application for the certiorari, and argued for them on the certiorari and for the respondents in the Court of Appeals, was employed for that purpose by the Clayton and Theresa Railroad Company. Record, p. 184. All the directors of said railroad com pany were petitioners in the proceedings before the County Judge. Record 190.

Pending the proceedings on the certiorari, and before the same was determined, on the 3d or 4th of April, 1872, Strough, Gates and Fults, the persons named as commissioners by said county judge, having notice of such proceedings, (Record, p. 182), at Watertown, in said County of Jefferson, in the presence of Biddlecom, treasurer of the Clayton & Theresa Railroad Co., executed Bonds to the amount of $80,000 in the name of said town, Record, p. 100, and delivered them to said R. B. Biddlecom as treasurer aforesaid, and subscribed for eight hundred shares of the capital stock of said railroad company, in name of the said town. Record, pp. 100–101.

$70,000 of these bonds were held by the Clayton &

Theresa Railroad Company until after the said decision of the Court of Appeals, and until the 31st day of May, 1873, when they were deposited by said company with Isaac Maynard, the treasurer, and one of the directors and finance committee of the Utica & Black River Railroad Company, Record, p. 189, as collateral security to a contract theretofore made with the said Utica & Black River Railroad Company by the said Clayton & Theresa Railroad Company, which they had failed to perform, Record, pp. 185, 189, with directions to sell as he might deem best, and place proceeds after deducting expenses of sale, in the hands of the Utica & Black River Railroad Company, as such collateral security. Record, p. 183. At the time of the last mentioned transfer Mr. Maynard, the treasurer of the Utica & Black River Railroad Company, and several of the other directors, members of the finance and executive committee of the said railroad company had heard of the decision of the Court of Appeals in reference to said bonding proceedings and knew of it, and had taken part in proceeding before the Legislature of New York, to procure an act legalizing such bonds, Record, pp. 190–192–194, and had negotiated the contracts, and made all negotiattions with the Clayton and Theresa Railroad relative to the taking such bonds and said contracts.

Each of these bonds so transferred were for $500, payable to bearer with interest at the rate of seven per cent. payable semi-annually on the 15th days of February and August in each year, redeemable at the office of the commissioners, on the 15th day of February in any year after 1892, and payable:

12	of	them	.....	.....	on the	13th February,	1894
14	"	"	.....	" "	15th	"	1895
15	"	"	.....	" "	"	"	1896
15	"	"	.....	" "	"	"	1897
16	"	"	.....	" "	"	"	1898

15 of them.....on the 15th February, 1899
15 " " ..... " " " " 1900
15 " " ..... " " " " 1901
15 " " ..... " " " " 1902

at the Metropolitan Bank in the city of New York, (record, pages 99, 100,) and to each of the bonds coupons were attached for the interest payments as they became due, and each was endorsed or registered in clerk's office, (record, p. 100.)

These bonds remained in said Maynard's possession as aforesaid until the 4th day of February, 1874, when, in the city of Chicago, he sold them to the plaintiff for 60 per cent of the par value, receiving therefor plaintiff's four promisary notes dated 4th Feb., 1874, three of $10,000 each, and the other of $12,000, payable each to the order of said Isaac Maynard at the Fourth National Bank, New York, respectively at 9, 12, 15, and 18 months, on interest. Record, p 190, 191.

Which notes were retained in said Maynard's custody until he forwarded them for collection 5 to 10 days before their maturity, and were never negotiated or transferred. The $12,000 note not having been paid at the time of trial, and still being in his custody. Record, page 190, 191. When collected the proceeds went to the credit of the Black River & Utica Railroad Company. Record. 191.

The defendants answer in this case was served on the plaintiffs attorney on the 10th of September, 1874. Record page 191.

It was filed September 9, 1874. Record p. 78.

On the trial it was agreed that such answer should be considered in evidence and read as showing notice of the contents thereof to the plaintiff. Record page 198.

The answer stated the facts as to the issuing of the certiorari, the pendency thereof when bonds were issued,

the proceedings thereon and decision of the Court of Appeals. Record pages 76 to 79.

Thereby the plaintiff received full notice of the issuing and pendency of the certiorari at the date of the bonds, and also of the reversal by the Court of Appeals, of the judgment and order of the County Judge appointing commissioners to issue the Bonds, and at this time he had not parted with a dollar for said bonds as the note first maturing was not due until Nov. 4, nearly two months thereafter, and the notes were all in the custody of Maynard to whom they were delivered and to whose order they were payable.

It was stipulated that the answer served to original complaint should stand as the answer to the amended complaint. Record, p. 78.

The questions raised on trial, and presented more fully in the assignment of errors and brief following this statement, were amongst others, the following:

First.—Plaintiff offered in evidence copy of record of the petition of certain taxpayers and the verification thereof, and the proceedings of the county judge thereon, to which the defendant below objected: 1st. That the whole proceeding was void for the reason set forth in the first assignment of errors, and 2d, That the petition was insufficient and did not contain the allegations required by the statute to confer jurisdiction on the county judge, as is also more particularly set forth in first assignment of errors, which objections were overruled, and to which exception was taken. Record, p. 86.

15 of them.....on the 15th February, 1899
15 " " ..... " " " " 1900
15 " " ..... " " " " 1901
15 " " ..... " " " " 1902

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Second—Plaintiff's counsel having offered to read in evidence the bonds in question, defendant's counsel objected thereto on ground that they were void on their face for reasons more particularly set forth in the second assignment of errors and the brief. Record, p. 99.

Third—Russel B. Biddlecom a witness called by plaintiff, having testified he was present when the bonds were executed and as treasurer of the C. & T.R.R. Co., received them from the alleged commissioners, and retained them as such treasurer until after the decision of the Court of Appeals, and then delivered them to Maynard, who was treasurer of the U. & B. R. R. R. Co., to sell under writ ten authority given by him and one Barker, the president of the C. & T. R. R. Co., and that he then knew of said decision of the Court of Appeals, was on cross-examination asked by defendant's counsel this question: "Had you and Mr. Barker been actually engaged in trying to procure an enactment of a law legalizing these bonds?" to which plaintiff's counsel objected, and the objection was sustained, and defendant excepted to the ruling, as is more especially set forth in third assignment of errors. Record, p. 184.

Fourth—After the above ruling said Biddlecom testified that the president and officers of the C. & T. R. R. Co. also knew of the decision of the Court of Appeals, and defendant's counsel thereupon asked Biddlecom whether before said delivery of said bonds to Maynard he had not consulted with other directors of the company on subject of getting those bonds out of the State as only means of getting them prosecuted in the United States Court, to which plaintiff's counsel objected. The objection was sustained, and defendant excepted. Thereupon defendant's counsel offered to prove by witness that he and other directors of his company consulted with said Maynard and others in reference to a disposition of these

bonds to get them out of the State that they might be sued in the United States Court, to which plaintiff's counsel objected, and the court sustained the objection and excluded the evidence, as is more fully set forth in the fourth assignment of errors. Record, p. 184.

Fifth—On re-examination of witness Biddlecom by plaintiff's counsel, the defendant's counsel objected to any evidence as to the building of the Clayton & Theresa Railroad, and the objection was overruled, and the witness allowed to testify as to the contracts between the C. & T. R. R. Co. and the Black River R. R. Co., the aiding in building the road by the latter, the failures of the former to perform the contract, and to be read in evidence said contracts. To such ruling defendant's counsel excepted, as more fully appears in the fifth assignment of errors. Record, pp. 184–5.

Sixth—To a question, thereafter put by plaintiff's counsel to same witness, as to whether there was a large amount due the U. & B. R. R. Co. under those contracts at time of trial and of delivery of the bonds to Maynard, defendant's counsel objected as incompetent and immaterial, and the court overruled the objection and received the answer in the affirmative, and to the ruling, defendant's counsel duly excepted, record, p 189, as will more fully appear in sixth assignment of errors and brief.

Seventh—Thereafter and after the witness Biddlecom had testified that Maynard was treasurer and one of the directors and on the finance committee of the U. & B. R. R. Co., and that Mr. Graham was the general attorney and counsel for that company, and that all the business transacted between the two railroad companies was transacted by Graham, West, Maynard and Thorn, defendant's counsel asked him whether Graham and Maynard, before delivering of the bonds to Maynard, did not participate with him in efforts to get the bonds legalized by

the Legislature, because of the reversal by the Court of Appeals, and thereto plaintiff's counsel objected as incompetent and immaterial, and the court sustained the objection, and defendant's counsel duly excepted. Record p 189, as more fully appears in seventh assignment of errors and brief.

Eighth — Plaintiff's counsel asked Isaac Maynard after he had testified as to selling the bonds to plaintiff, whether plaintiff was a man of large property, to which defendant's counsel objected as incompetent and immaterial, and the court overruled the objection and exception thereto was duly taken by defendant's counsel, and answer was given that he supposed he was. Record, p 191, more fully set forth in eighth assignment of errors and brief.

Ninth—Plaintiff was called as a witness in his own behalf and testified as to his purchase of the bonds in question, after which his counsel asked him this question, "Question—Did you purchase them in good faith?" To which the defendant's counsel objected as incompetent and the court overruled the objection, and allowed his answer that he did. Record, p. 197. Ninth assignment of error.

Tenth—After it was agreed that the defendants answer which was admitted to have been served on the plaintiff's attorney, September 10th 1874 should be regarded as read in evidence for the purpose of showing notice to plaintiff of its contents, and after proof was closed the defendants counsel asked the court to direct a verdict for defendant because it appeared plaintiff had not paid anything for these bonds until November 1874, previous to which he had full notice of their invalidity. The Court refused the request and defendants counsel duly excepted as more particularly appear in 10th assignment of errors, and Record p. 198.

Eleventh—Thereupon defendants counsel asked the Court to direct a verdict on twelve different grounds, which are particularly specified and set forth in eleventh assignment of errors, which request the Court refused and thereto exception was duly taken by defendants counsel. See Record p. 199 and 200.

Twelfth—Then defendants counsel asked the Court to rule amongst other things that the proof was not sufficient for the Court to decide as matter of law that the railroad companies referred to or the plaintiff were bona fide holders of the bonds, and to submit to the jury the question whether either of them was a bona fide holder thereof and the Court refused the requests and thereto exceptions were duly taken by defendants counsel which requests and rulings will more fully and particularly appear in twelfth assignment of errors and the Record p. 200.

Thirteenth—The Court thereupon directed the jury to find the verdict as given and thereto the counsel for dedefendant's duly excepted. Record p. 200 and thirteenth assignment of error.

ASSIGNMENT OF ERRORS.

For a first assignment of error the plaintiff in error insists that the court below erred in overruling each of the objections made by it, to the offer in evidence by plaintiff's counsel, of the record of the petition of the taxpayers and verification and the determination mination of the county judge thereon (to which defendant below excepted) as found in Record, pp. 86 to 91, as follows:

"The plaintiff's counsel thereupon offered in evidence "a duly authenticated copy, under the seal of the clerk of "Jefferson County, of the record of the petition of the "tax-payers of said town of Orleans, and the verification "thereof, and of the proceedings of the county judge of "Jefferson County thereon and in reference thereto, and "of the determination and adjudication by and of the "said county judge upon said petition and proceedings, "and the proof of publication of notice of said deter-"mination and adjudication.

"The counsel for the defendant objected to the read-"ing of the same in evidence, on the following grounds: "That it is void, for the reason that the proceedings "were commenced under the provisions of the said chap-"ter 907 of 1869, of the laws of the State of New York, "and while the provisions of said chapter were in full "force, and before the said chapter 925 of 1871, of said "State took effect, and for that reason the petition being "drawn under the act of 1869 is not good under the act "of 1871. The act of 1871 operated as a repeal of the "provisions of the act of 1869, conferring jurisdiction on "the county judge; consequently, this proceeding having "been commenced under the act of 1869, could not be "completed under the act of 1871. The petition is bad "under the laws of 1871.

"The court overruled this objection, and the counsel "for the defendant duly excepted.

"2d. That the petition is insufficient, as it contains no "allegations that the petitioners are taxed or assessed for, "or represent a majority of, the taxable property of the "town; also that it don't appear from the petition that "the petitioners are a majority of the taxpayers of said "town, not including those assessed for dog-tax or high-"way tax only.

"The court overruled this objection, and the counsel for "the defendant duly excepted, and the said papers were

" read in evidence by said plaintiff's counsel, and were in
" the words and figures following, viz:

" To the Hon. A. H. Sawyer, County Judge of the county
" of Jefferson, in the State of New York:"

" Your petitioners, whose names are hereto subscrib-
" ed, respectfully show to the honorable county judge of
" said county, that the town of Orleans is a municipal cor-
" poration in the county of Jefferson and State of New
" York; and, as appears by the last preceding taxlist or
" assessment-roll of the town of Orleans, in said county
" the assessed valuation of the property of said town is
" $498,470; that the number of names appearing on said
" tax-list or assessment roll as owning or representing the
" whole of the taxable property in the corporation limits
" of said town is four hundred and ninety-five; that your
" petitioners, the subscribers hereto, are and do constitute
" a majority of the taxpayers of said town, whose names
" appear upon the last preceding tax-list and assessment-roll
" as owning or representing the taxable property in the
" limit of said corporation or town, and that your petition-
" ers do own and represent a majority of said taxable
" property in the corporate limits of said town, as appear-
" ed by the said last preceding tax-list or assessment-roll of
" said town.

" Your petitioners further show that they desire that
" the said town of Orleans shall create and issue its bonds
" to the amount of $80,000 (eighty thousand dollars), not
" exceeding twenty per cent. of the amount of taxable
" property of said town, as shown by said tax-list and as-
" sessment-roll, and invest the same or the proceeds there-
" of in stock of the Clayton and Theresa Railrod company,
" in pursuance of the provisions of chapter 907 of the
" laws of New York, passed May 18, 1869, and the acts
" amendatory thereto.

" And your petitioners further pray that
" , who are freeholders, residents and taxpayers
" within the corporate limits of said town, may be appoin-
" ted and commissioned by your honor for the purpose of
" making and executing the bonds of said town to the
" amount and for the purpose aforesaid, and for the pur-
" pose of subscribing, in the name of said town, to the stock
" of said railroad company to an amount equal to such
" bonds, and for the other purposes mentioned and con-
" templated in said act."

(Here follows names of petitioners, headed by R. B. Biddlecom).

" JEFFERSON CO., *ss.*

" Russell B. Biddlecom, being duly sworn, saith that he
" is one of the petitioners hereto annexed; that he has
" read the said petition and knows the contents of the
" same, and that the same is true to his knowledge except
" as the matters stated on information and belief, and as
" to those he believes the said petition to be true.

RUSSEL B. BIDDLECOM.

" Sworn to before me this 3d day of May, 1871.

" A. H. SAWYER,

" County Judge."

SECOND ASSIGNMENT OF ERROR.

For a second assignment of error the plaintiff in error insists that the court below erred in overruling the objections made by the defendant below to the reading in evidence on offer of plaintiff below the 140 bonds, to which ruling exception was taken. Having proved the signatures to the bonds. "The plaintiff's counsel then offered in " evidence the said 140 bonds of the town of Orleans, " issued by said commissioners. To which the defend-

" ant's counsel objected on the grounds: 1st, That on " their face the bonds are void, because not issued in pur- " suance of the provisions of the laws of 1869, which " authorizes the commissioners to issue bonds payable in " not less than 30 years, or the act of 1871, which allows " the issue to be made payable in less than 30 years, but " does not authorize them to issue bonds redeemable at " any time in their discretion. The time of payment " must be fixed, which objection was overruled, and the " defendant's counsel duly excepted to such ruling. The " said 140 bonds were then read in evidence." Record, p. 99.

The plaintiff insisted, and now insists, that no authority existed under the statute for issuing the bonds containing provisions that they are " redeemable nevertheless " at the option of the said commissioners or their successors " on the fifteenth day of February or August in any year " after the year 1892." A copy of the bonds will be found in the argument on this alleged error in the following brief.

THIRD ASSIGNMENT OF ERROR.

For the third assignment of error plaintiff in error insists that the court below erred in sustaining the objection of plaintiff below to the question put by defendant to witness R. B. Biddlecom, as follows:

" Q. Had you and Mr. Barker, the president of your " road been actually engaged in trying to procure an en- " actment of a law legalizing these bonds? To which " the plaintiff's counsel objected as incompetent unless " some notice or knowledge of same was brought home " to plaintiff. The court sustained the objection, and the " defendant's counsel excepted to such ruling." Record,

p. 184, fol. 298. It is insisted such ruling was erroneous, and that an answer to the question should have been allowed, and the exception was well taken.

FOURTH ASSIGNMENT OF ERROR.

For a fourth assignment of error plaintiff in error insists that the court below erred in sustaining the objections of plaintiff to the defendant's question to witness R. B. Biddlecom, and the offer of evidence, as follows:

"Q. That is what I mean. Now, Mr. Biddlecom, be-
" fore you delivered those bonds to Mr. Maynard, had
" you not consulted with other directors of your company
" and other persons on the subject of getting those bonds
" out of the State, as the only means of getting them
" prosecuted in the United States Court.

" (To which the plaintiff's counsel objected, unless some
" notice or knowledge was brought home to the plaintiff,
" which objection was sustained by the court, and the
" defendant's counsel duly excepted to such ruling.)

" The defendant's counsel thereupon offered to show
" that the witness, and other directors of this company
" consulted with Maynard and others in reference to a
" disposition of these bonds, the object being to get them
" out of the State, that they might be sued in the United
" States Court.

" (To which offer of proof the plaintiff's counsel object-
" ed as incompetent and immaterial; that it could not
" affect plaintiff unless he had some notice or knowledge
" of the same.

" The Court sustained the objection, excluded the evi-
" dence, and the defendant's counsel duly excepted.)" Record p. 184.

And plaintiff in error insists the exceptions to such ru-

lins were well taken and that the evidence should have been allowed under defendant's answer.

FIFTH ASSIGNMENT OF ERROR.

For a fifth assignment of error plaintiff in error insists that the court below erred in its overruling the objection and to admission of evidence as follows:

" The defendant's counsel here objected to any testimo-
" ny about the Clayton and Theresa railroad or the build-
" ing of it, which objection was overruled and the defend
" ant's counsel duly excepted." Record bottom of p. 184
" and top of 185.

He insists the exception thereto was well taken, and that the said court erred in admitting the evidence given in answer thereto, as to the contract with the Black River road and its aid in the building of the Clayton and Theresa road and the default of the latter in the performance of the contract, was incompetent and immaterial and ought to have been excluded.

SIXTH ASSIGNMENT OF ERROR.

For a sixth assignment of error plaintiff's in error insists that the court below erred in overruling its objection to the following question put by plaintiff's counsel below to Biddlecom and in allowing answer thereto, to each of which exception was duly taken, viz:

" Question. Is there now and was there then due the
" Black River railroad company a large amount under
" those contracts? To which the defendant's counsel ob-
" jected on the ground that it was incompetent and imma-
" terial, which objection the Court overruled and allowed

"the question to be answered, to which ruling the de-
"fendant's counsel duly excepted and the witness ans-
"wered.

"Answer. Yes sir, which we have not been able to
"settle up yet." Record p. 189, fol. 310.

SEVENTH ASSIGNMENT OF ERROR.

For a seventh assignment of error the plaintiff in error insists that the Court below erred in sustaining objection of plaintiff below to and overruling the question put by defendant's counsel to witness Biddlecom to which ruling it excepted as follows, viz:

"Question. Did Mr. Graham and Mr. Maynard partic-
"ipate with you in efforts to get these bonds legalized by
"the Legislature because of the reversal by the Court of
"Appeals?

"(To which the plaintiff's counsel objected as incompe-
"tent and immaterial and the Court sustained the objec-
"tion and overruled the question, and the defendant's
"counsel duly excepted." Record p, 189 fol. 310, 311.

This question was put after it was proved Graham and Maynard had acted for the Utica and Black River railroad company in negotiation of the contracs with the C. & T. RR. Co., and the taking of these bonds as security and related to a time just anterior to delivery of same to Maynard to sell for U. & B. RR. Co.

EIGHTH ASSIGNMENT OF ERROR.

For an eighth assignment of error, the plaintiff in error insists that the court below erred in overruling its

objection to the question referring to the plaintiff below and put by his counsel to witness Maynard, and allowing answer thereto as follows, viz: "Question—Was he a "man of large property? To which the defendant's "counsel objected as incompetent and immaterial. The "objection was overruled by the court, and the defend- "ant's counsel duly excepted, and the witness answered, "Answer—I suppose he was." Record, p. 191, fol. 315. And it is insisted that the exception to such ruling was well taken.

NINTH ASSIGNMENT OF ERROR.

For a ninth assignment of error, the plaintiff in error insists that the court below erred in overruling objection of defendant below to question put to plaintiff below by his counsel referring to his purchase of the bonds in qustion, and in allowing answer thereto and excepted to as follows, viz:

"Question—Did you purchase them in good faith? "To which the defendant's counsel objected as incom- "petent. The court overruled the objection, and al- "lowed the answer following to be read, to which ruling "and receipt of evidence the defendant's counsel duly "excepted. Answer—I did purchase them in good "faith." Record, p. 197, at bottom and top of 198. And it is insisted said exception to such ruling was well taken.

TENTH ASSIGNMENT OF ERROR.

For a tenth assignment of error, the plaintiff in error, insists that the court below erred in refusing to direct a

verdict for defendant, as first requested after close of the proofs next after the following :

" It was agreed that the defendant's answer to plain-
" tiff's complaint should be considered in evidence and
" read as showing notice of its contents to plaintiff. The
" proofs were here closed.

" The counsel for the defendant insisted and
" asked the court to direct a verdict for the defendant
" on each of the following grouds separately :

" 1st. It appears upon the undisputed evidence that the
" plaintiff had not paid a dollar for these bonds until
" November 1874, and that the answer of defendant in
" this case (which is on file) and regarded in evidence,
" was served on the 10th of September, 1874, upon his
" attorney, which give him full notice of the defence in
" this case, which was notice to the plaintiff and deprives
" him of all claim to be an innocent or bona fide holder
" or purchaser of the bonds in question.

" The court refused to rule and direct a verdict as so
" requested for defendant, and to such refusal the counsel
" for defendant then and there duly excepted."

Record, p. 198, fol. 334–5. And it is insisted the aforesaid exception to said ruling was well taken.

ELEVENTH ASSIGNMENT OF ERROR.

For an eleventh assignment of error the plaintiff in error insists that the court below erred in refusing to direct a verdict as requested by it upon the grounds or either of them stated as follows, to which ruling and refusal, and each thereof upon each ground stated, the defendant excepted as follows, viz:

" The counsel for the defendant then insisted and asked the court to direct a verdict for defendant on each of the following grounds separately:

" 1st. That the proceedings for the bonding of the town of Orleans, and the decision of the county judge upon the same having been reversed and the whole proceeding set aside and adjudged void, the bonds on which this action is brought were issued without authority of law and are null and void.

" 2d. That inasmuch as the writ of certiorari to review the judgment of the county judge was served before the issuing of these bonds and was pending and undetermined when the bonds were issued and was subsequently prosecuted to final judgment, declared the whole proceeding to bond the town of Orleans void, the bonds were illegally issued, and are null and void, and the plaintiff, although he be a bona fide holder, could acquire no right or title to them.

" 3d. That when the writ of certiorari was served and return made there was no longer any judgment on file; in contemplation of law that judgment and the whole proceeding was taken bodily out of the clerk's office into the higher court, and is deemed unfinished, and is to be completed in the higher court. There is no record there and no authority there for the issue of these bonds. There is another want of power on the part of anybody to issue these bonds.

" 4th. That these proceedings to bond the town of Orleans was under the general funding act of the State of New York, passed in 1869, and while it was in full force. On the petition drawn in conformity to that act, signed by a class of petitioners who were authorized to petition under that act, the proceedings remain-

" ed unfinished and pending before the county judge " when the amendatory act of the legislature of the State " of New York, passed in 1871, took effect, and was " completed afterwards, continuing the same proceedings " commenced under the act of 1869, under the act of " 1871. The proceedings are therefore void and the pro- " ceedings thus commenced could not be complete under " the act of 1871, as the petition did not conform to the " act of 1871.

" 5th. That the act of 1871 operated as a repeal of sec- " tion one of the act of 1869, which gave the county " judge jurisdiction, and put an end to the whole pro- " ceedings before the county judge, and all the subse- " quent proceedings were void.

" 6th. That the Utica & Black River Railroad Com- " pany was bound—was chargeable at the time of the " delivery of the bonds, to wit : to Maynard, with notice " of the proceedings as they appeared on the record, in- " cluding the reversal of the decision of the county judge, " showing he never had the jurisdiction to make the or- " der and judgment.

" 7th. That Maynard was chargeable with notice in the " same manner.

" 8th. That the plaintiff was chargeable with notice in " same manner by the record, and that thereupon and " thereby he had notice there never existed any authority " to issue these bonds.

" 9th. That the Clayton & Theresa Railroad Company " had actual notice of the issuing of the bonds pending " the writ of certiorari, and the bonds were therefore in " their hands utterly void.

" 10th. That the Utica and Black River Railroad com-

" pany, by the notice proved to Maynard & West & Gra-
" ham, had actual notice sufficient to charge them with
" full notice of the illegality of these bonds, that they
" were issued without authority and were void, and of the
" reversal of the judgment of the county judge by the
" court of Appeals.

" 11th. That the acts of the legislature of the State of
" New York, under which the said proceedings for the
" bonding of the town of Orleans, and under the proceed-
" of which those bonds are claimed to be issued, are un-
" constitutional and void—as being contrary to the pro-
" visions of the constitution of the State of New York.

" 12th. That inasmuch as the authority to issue these
" bonds rested entirely upon the adjudication and pro-
" ceedings on record in the clerk's office, the plaintiff and
" all other parties dealing with these bonds were bound to
" inquire and look for that authority, and, on looking, the
" evidence shows there was none, and therefore the plaint-
" iff and all others had notice the bonds were issued with-
" out authority, and are void.

" The court refused to direct a verdict in favor of the
" defendant upon the aforesaid grounds or requests, or up-
" on either of them; to which refusal the counsel for the
" defendant then and there excepted." Record, bottom of p. 198 to top of p. 200.

And it is insisted that the exception was well taken and verdict should have been directed upon some of those grounds.

TWELFTH ASSIGNMENT OF ERROR.

For a twelfth assignment of error the plaintiff in error insists that the court below erred in refusing to rule and

direct the jury as requested, and in refusing to submit to the jury the question or propositions requested by it to which refusals and each thereof, defendant excepted, as follows, viz:

"The counsel for the defendant then insisted that inasmuch as the proof shows that these bonds were illegally issued, and hence the legal presumption is against the plaintiff, and the whole burden of proof is upon him, the proof is not sufficient for the court to decide as matter of law that the railroad companies or plaintiffs are bona fide holders of said bonds. That a willful and negligent avoidance of inquiry on the part of the plaintiff, or a willful keeping himself ignorant on the part of the plaintiff, was equivalent to a notice of the defects in said bonds, and thereupon asked the court to so rule and direct the jury, and to submit to the jury the following questions or propositions, to-wit:

"1st. Whether either or both of the said railroad companies, the Clayton & Theresa Railroad Company, and the Utica & Black River Railroad Company, were bona fide holders of said bonds.

"2d. Whether the plaintiff is a bona fide holder of said bonds.

"The court refused to rule or direct the jury as requested by said several requests of the defendant's counsel, and refused to submit the said several questions or propositions to the jury as requested; to which said several rulings and refusals to rule, and refusals to submit the said questions or propositions to the jury, and to each thereof, the defendant's counsel then and there duly excepted." Record, p. 200, f. 339.

THIRTEENTH ASSIGNMENT OF ERROR.

For a thirteenth assignment of error the plaintiff in error insists that the court below erred in directing the jury to render the verdict for plaintiff below and against defendant, to which said defendant there excepted, as follows, viz:

"And thereupon the said court directed the jury to "render a verdict in favor of the plaintiff and against the "defendant for $7,776.43, to which order and direction of "the court the counsel for the defendant then and there "duly excepted." Record p. 200, fol. 340.

And thereupon the jury under such direction rendered the verdict. It is insisted such exception was well taken.

BRIEF AND ARGUMENT.

I.

In his declaration or complaint the plaintiff, after alleging the proceedings and determination of the county judge upon the petition, and under the statutes referred to in the preceding statement of the case, and the issuing of the bonds on the 15th of February, 1871, and the registering thereof by the county clerk April 3, 1872. Record, pp. 1–2, at p. 3 of Record avers "That afterwards "and before the first day of January, 1873, the said com- "missioners did deliver the said 140 bonds above men- "tioned, with the coupons annexed, to the said Clayton "& Theresa Railroad Company, in payment and ex-

" change for an amount of the stock of said railroad " company equal at par to the amount of the principal of " said bonds, which stock was then and there transferred " and issued to and received by the said commissioners " for and in behalf of said defendant by virtue of and " pursuant to said acts. That afterwards, and before the " first day of February, 1874, the said 140 bonds, with " the coupons or interest warrants annexed for the pay- " ments of interest falling due on the fifteenth of Febru- " ary, 1874, and subsequently, were duly transferred and " delivered to this plaintiff, for a valuable consideration " parted with by him therefor, and that this plaintiff was " and is a bona fide holder of each of said bonds and the " coupons annexed for a valuable consideration parted " with by him therefor."

The defendant in its answer as plea to said complaint, denied " the same and each and every allegation therein contained," record, p. 76.

This under the code of New York and sec. 5 of act of Congress, of June 1, 1872, sec. 914, p. 173 of R. S. of U. S., conforming pleadings, &c., to those in courts of record of the State, formed an issue as to whether plaintiff was such bona fide holder or purchaser of the bonds in question.

Before argument of the several assignments of error, we ask the attention of the court to the fact that the plaintiffs' allegations in this regard were not sustained by the proofs, but on the contrary, it was clearly proved that plaintiff was neither a bona fide purchaser or holder of said bonds.

The rule is, that to constitute one a bona fide purchaser, he must not only have acquired legal title in the ordinary course of business, but must have *actually paid the purchase money*, must have parted with value, before having notice of the fact showing the invalidity of the

paper. *Mere security to pay the purchase price is not a purchase for a valuable consideration.*

This rule is declared in the following cases, viz :

Weaver vs Barden, 49 NY. 291.
Crandall vs Vickery, 45 Barb. 156.
Jackson vs Cadwell, 1 Cowen 622.
Jewell vs Palmer, 7 J. C. 65.
Fulton Bk, vs Phœnix Bk. 1 Hall, 562,
White vs Springfield Bk., 3 Sandf. s. c. 227.
Touville vs Naish, 3 P Wms. 306.
Story vs Lord, 2 Atk, 630.
Maundrell vs Maundrell 10 Ves, 246, 271.
Hardingham vs. Nichols 3 Atk. 304.

All the above cases were cited and approved by this court in Dressor vs. Missouri &c., R. R. 3 Otto 92–4–5. The same is held in Demott vs. Starkey, 3 Barb, Chy. 403, and numerous others in New York, and is the universal rule.

" The decisions are placed on the ground, according to Lord Hardwick, that if the money is not actually paid the purchaser is not hurt. He can be released from his bond in equity" as stated in opinion per Mr. Justice Hunt in 3 Otto, at top of page 95.

Here the plaintiff on purchase of the bonds paid nothing in fact, but only gave his four notes and the one first maturing became due Nov. 4th, 7th, 1874 nearly two months after the defendants answer in this action was served on his attorney and filed and became a part of the record of the court.

It was filed September 9th 1874, Record p. 78, and was served on plaintiff's attorney, September 10, 1874. Record p. 191.

Isaac Maynard, a witness testified " I was Treasurer of " the Black River and Utica Railroad company in 1873 " and have been six or seven years ; I am the Isaac May " nard mentioned in the writing given by Barker and

" Biddlecom for the sale of these bonds; I had heard be-
" fore the receipt of these bonds under that agreement of
" the decision of the Court of Appeals with reference to
" the bonding decision; * * I delivered these bonds
" to the plaintiff, Mr. Platt, and received from him four
" notes one of which is not yet paid; It is in the bank at
" Utica; It has been there over a year in the treasurers
" box of our company in which we keep our papers in the
" vault of the bank; It is now in the possession and cus-
" tody of our railroad company; I received these notes on
" the 4th of February 1874; I never got them discounted,
" as they matured sent them down for collection, proba-
" bly from five to ten days before maturity; I sold the
" bonds to Platt for 60 cents on the dollar for the face of
" them and took four notes at 9, 12, 15 and 18 months."
Record p. 190.

The notes were each dated February 4, 1874, and *payable* to the *order of* Isaac Maynard, as appears from copy thereof found in Record, p. 191.

Maynard's evidence shows the notes continued in his custody and control long after notice to plaintiff of the defense, and whether it is claimed he held such control as treasurer of the railroad company or individually is immaterial, as will hereafter appear.

Nathan E. Platt, the plaintiff, testified, after stating Maynard's proposition to sell, and conversation on the subject, as follows:

" After that time I consummated the purchase of the
" bonds, after further talk about it. He proposed to take
" 4 notes in 9, 12, 15 and 18 months, with interest at 7
" per cent., payable at Fourth National Bank in New
" York City. I told him I would take the bonds on
" those conditions. I made out the notes. The first
" three notes were made for ten thousand dollars and in-
" terest each, payable 9, 12, and 15 months after date,

" and the last note was twelve thousand dollars and inter-
" est, payable in 18 months, each payable to the order of
" Isaac Maynard. I gave him those four notes in ex-
" change for one hundred and forty bonds of $500 each
" in amount $70,000. The coupons maturing the 15th
" of that month were on the bonds. I paid sixty cents
" on the face of the bonds, and got the bonds and cou-
" pons for it, and paid nothing on account of the cou-
" pons, except with the bonds." Record, p. 196.

On the trial this entry was made "It was agreed that the defendant's answer to plaintiff's complaint should be considered in evidence and read as showing notice of its contents to plaintiff."

The third defence contained in such answer so filed, served and put in evidence is in the Record, p. 76 to 78, and is as follows, viz;

"For a further answer and third defence, said defend-
" ant alleges that under and pursuant to the provisions of
" the acts of the Legislature of the State of New York,
" in said plaintiff's complaint referred to, and the
" Statutes of said State, and by virtue of the power vested
" in the Supreme Court of said State, at special term of
" said court, duly held in and for the county of Oneida,
" at the Court House in the city of Utica, on the 12th
" day of September, 1871, on application of taxpayers of
" said town of Orleans, an order was duly granted after
" due notice of such application given and hearing, had
" by the petitioner in said proceedings before the county
" judge in said complaint referred to, directing that a
" certiorari issue out of said court and be allowed,
" directed to Azariah H. Sawyer, county judge of said
" county of Jefferson, and to the clerk of said county,
" commanding them, respectively, under their hands and
" seals, to certify and return to said Supreme Court, at
" the next general term thereof, in the 4th judicial de-

" partment, all the proceedings had before said county " judge, and all record thereof remaining of record in the " clerk's office of said county, in the matter of said peti- " tion and appointment of said commissioners in the " plaintiff's complaint referred to, and all matter pertain- " ing thereto, which order was duly entered in the clerk's " office of the said Jefferson county, and thereof the said " Strough, Gates and Folts, the said commissioners had " due notice, and such writ of certiorari was duly issued " and filed in said clerk's office in October, 1871, and said " county judge and county clerk did, as therein required " and commanded, certify to said General Term of said " court all said proceedings, records and matters relating " to the appointment of said commissioners, and of all " thereof said commissioners had due notice, and all power " and authority vested in and conferred upon said com- " missioners, under and by virtue of said acts of the " Legislature, and the proceedings and appointment in " said complaint mentioned was thereupon suspended " and superseded, and all proceedings by said commis- " sioners were thereby and by virtue of the law in such " case provided stayed pending such certiorari, and until " final hearing and decision thereon in said court.

" That such certiorari remained pending in said court, " so staying their proceedings and suspending their pow- " er to act until the 20th day of June, 1872, when a de- " cision of said court thereon, at term then held, was " was made and rendered, the same having been argued " in May, 1872, at a term of said court then held. That " from the decision and order of said Supreme Court " there made, at a General Term an appeal was duly " taken to the Court of Appeals, the highest court of " said State, on the 10th day of July, 1872, and such " proceedings were had in such appeal in said last-named " court that after full argument and hearing of all the " parties concerned or interested, and due consideration

" had in and by said Court of Appeals, a decision and
" order was duly made by such court in February, 1873,
" reversing and setting aside all and every the proceed-
" ings, adjudication, and appointment of said commis-
" sioners in complaint stated, by said county judge, and
" directing the record of such decision remitted to said
" inferior court, and such remittitor in accordance with the
" rule and practice of said courts and the law in such case
" made, was duly filed in the clerk's office aforesaid, and
" the judgment of said Court of Appeals was, by order
" of said Supreme Court, dated March 19, 1873, duly
" made the judgment of said last-named court, and there-
" by all power conferred or attempted to be conferred by
" said appointment named in said complaint, or thereby
" attempted to be conferred thereby, was divested and
" taken away. That the Clayton & Theresa Railroad
" Company, its officers and agents, the said Strough, Folts
" and Gates, the alleged commissioners, and all persons and
" parties through whose hands or custody the alleged bonds
" in complaint referred to have passed, had notice of all
" the proceedings aforesaid, and aided and assisted by
" their counsel, attorneys, and otherwise in the defence of
" said certiorari and appeal, and in the efforts to sustain
" such appointment of commissioners.

" The defendant further alleges that pending said cer-
" tiorari in the supreme court, and in the month of April
" 1872, the said Clayton and Theresa Railroad company,
" its officers and agents, and the said Strough, Gates and
" Folts, well knowing the pendency of said writ and pro-
" ceedings thereon, and with intent to cheat and defraud
" the defendant, its inhabitants, and the property owners
" and taxpayers therein, and to attempt to evade a de-
" cision of said court, conspired, confederated and colluded
" together to issue said bonds, and in execution of such
" conspiracy and fraudulent intent met at Watertown,
" several miles distant from the town of Orleans, and in

" the night time in a secret manner, made, and said com-
" missioners signed said bonds in complaint mentioned,
" and thereafter, in said April 1872, the same were put
" in the hands of one Biddlecom, the treasurer of said
" railroad company, but there was not any valid subscrip-
" tion for stock made and no good-faith delivery of said
" bonds therefor, and only a pretended and colorable one,
" to be made available or not as the said conspirators and
" their confederates should thereafter determine, said
" bonds or any thereof were never passed, assigned or
" transferred to any bona fide holder or innocent purcha-
" ser for value; but the same held and continued in the
" possession, custody, and control of said Clayton and
" Theresa Railroad company, its agents and officers, and
" other parties, who, having notice and being cognizant of
" all the facts, acts, doing and fraudulent intent, conspi-
" racy above stated, subsequently confederated, conspired,
" and colluded with them to attempt to carry such afore-
" said fraudulent intent into further execution, until after
" the aforesaid decision of said court of appeals, and after
" they were fully apprised thereof, and all the said par-
" ties who held and into or through whose hands said
" bonds passed before the same came or are alleged
" to have come to the hands of the plaintiff, were,
" during all the time aforesaid, residents, inhabitants,
" and citizens of the State of New York, and with-
" in the territory of the second circuit and norther dis-
" trict thereof, and under and by virtue of the laws
" of the said State and the United States and the rules
" and practice of this court, the parties by whom
" said bonds were transferred to the plaintiff and who
" held the same before they were assigned to him, and
" who transferred the same to him, could not maintain
" this action in this court, and of each, every and all the
" matters and things above alleged the plaintiff had no-
" tice when he received said bonds, and he did not receive

" the same in good faith or for value parted with at the " time or in the regular course of business, but he pre- " tended to purchase and receive the same for the sole " purpose of holding out that he was a non-resident of " the said State of New York and a purchaser of said " bonds as a means of endeavoring to maintain this action " in this court as a further means of more effectually fur- " thering and carrying out the fraudulent intent and " scheme herein above alleged, to defraud the defendant " taxpayers and owners of poperty within its territorial " limits.

" And defendant further alleges that the plaintiff when " he received said bonds knew that the person or party " from whom he received the same could not maintain an " action thereon, or for the recovery of the interest " thereon, for the reason that the same were by the laws " of the State of New York utterly void, and had been " fraudulently and without authority issued, as herein- " above stated, and such prior holders thereof were resi- " dents of the State of New York; and all the proceed- " ings aforesaid upon certiorari and appeal, and the deci- " sion thereon, were of record in aforesaid county clerk's " office."

We submit upon this showing that plaintiff was not a bona fide purchaser or holder of the bonds, as he paid nothing therefor until after notice sufficient to apprise him that those bonds were issued without authority and were void. That they were issued by the alleged commissioners, who were petitioners and parties to the record of the proceedings, after the allowance of the writ of certiorari, the service thereof and return thereto made and filed, had removed that record to the Supreme Court, and revoked and superseded all their powers to act as commissioners, and while that certiorari was pending in the Supreme Court undetermined and they knew of it. The

writ was allowed in September, served in October and return thereto made in December 1871, and the bonds were actually issued in April but bear date February 15, 1872, and certiorari determined in June 1872.

That answer also gave notice to plaintiff, "that the "Clayton & Theresa railroad company, its officers and "agents, the said Strough, Folts and Gates, the alleged "commissioners, and all persons and parties through "whose hands or custody the alleged bonds in complaint "referred to have passed, had notice of all the proceed-"ings aforesaid, and aided and assisted by their counsel, "attorneys and otherwise in the defence of said certi-"orari and appeal and in the efforts to sustain such ap "pointment of commissioners," as well as that the bonds were otherwise fraudulent and had never been in hands of any bona fide holder or purchaser thereof.

Upon plaintiff's receiving this notice it was optional with him to rescind the purchase, enjoin the transfer of and recover back the notes he had given for the bonds, or do as he did, pay with notice at his own peril and assume the risk of the alleged defence being established. Defendant's rights and equities then became prior and superior to plaintiff's, who could have rescinded, and recovered the notes back in the courts of New York, where they were held.

Demott vs. Starkey, 3 Barb., Chg. R., 403; 4 4 Otto, 92, and cases cited.

See 8 supra Sub. 2 & Cases cited on pp 95-96 - supra

It will not be pretended that the promise to pay was actual payment or parting with value.

Had Maynard endorsed and negotiated the notes, to a bona fide holder, before that notice, the case would have been different.

But he had not. In his evidence above given he says: "I never got them discounted. As they matured sent "them down for collection, probably from five to ten days "before the maturity," meaning he sent them.

Being payable to order of Maynard they could not be transferred without his endorsement.

He does not even pretend they were endorsed and transferred over to his railroad company and it will not be presumed they were. If they were, it was alleged and hereafter will appear that that company was not a bona fide holder, and plaintiff could have recovered them from it.

We have thus shown that the plaintiff was not such bona fide holder as to preclude defendant from showing all the facts covered by his answer constituting a defence against these bonds in hands of previous holders as well as his.

4 Otto, middle of p. 285.
Chambers county vs. Clews, 21 Wall. 317–321 323.
The Mayor vs. Ray, 19 Wall. near bottom p. 482.

We ask the Court to refer to the foregoing in connection with and as part of the argument following on each of the several assignments of error especially the 8th and subsequent ones.

II.

The petition which was presented to the county judge and on which the proceedings were based in which the commissioners were appointed, did not conform to the requirements of the statute authorizing the proceed-

ings, and therefore all proceedings under it are void—the county judge acquiring no jurisdiction to act.

This point is raised by the first assignment of error (at p. 19 hereof,) and is more fully elaborated hereafter in the point made under the eleventh assignment of error.

See Statute Supra P. 7
" Petition " P. 21
" Authorities Supra 89-90

III.

As to the second assignment of error. In his complaint plaintiff, after referring to the statutes, averred that "By the acts it was and is further enacted that it "should be the duty of the commissioners so appointed "to make and issue the bonds of the municipal corpora- "tion, payable at the end of 30 years from their date," &c. Record, bottom of page 1 and of page 2.

Such was the express provisions of sec. 4, of chap. 907 of laws of 1869. Statement of facts page 4.

Section 6, of the act of 1871, provides that the "com- "missioners may issue the said bonds payable at any "time they may elect, less than thirty years, any law "heretofore passed to the contrary, but they shall not so "issue said bonds that more than ten per cent of the "principal of the whole amount of the bonds issued shall "become due or payable in any one year." Statement page 9.

The bonds were payable at specified times, but each contained the provision that it is redeemable at the option

of the commissioners on 15th of February or August in any year after 1892.

The insertion of that provision was not authorized by the statute and renders the bond illegal and void on its face, if otherwise valid.

No authority to issue these bonds existed aside from these statutes, and the statute which every purchaser thereof, is bound to know and the face of the bond, gave notice, that by this statute no authority to borrow money existed otherwise than as prescribed by it.

The Moyor vs Ray, 19 Wall. 468, 475, 7–8.

This question is not covered by the cases of

Commissioner vs Clark, 4 Otto 278.
Township of Rock Creek vs Strong 6 Otto 271.

In those cases it was held only that the time of actually issuing the bonds and the registry thereof, and from which interest was payable, was to be regarded as the time to compute from.

The following is a copy of the bonds, all being alike save as to time of maturity, as in record, p. 99–100.

"No. 21. UNITED STATES OF AMERICA. $500.

State of New York, town of Orleans. In aid of the Clayton & Theresa Railroad Company.

(Issued by virtue of chap. 907 of the laws of the State of New York, passed May 18, 1869, and the several laws amendatory thereto.)

Know all men by these presents, that we, George H. Strough, Samuel W. Gates, and Simon Folts, commissioners, under the acts above referred to, for the town of Orleans, in the county of Jefferson and State of New York, upon the faith and credit and in behalf of the said town, and confirmed by a majority of taxpayers, representing a majority of the taxable property of the same,

according to said acts, for value received, do hereby promise to pay to the bearer hereof the sum of five hundred dollars, on the fifteenth of February, in year one thousand eight hundred and ninety-four, at the Metropolitan Bank, in the city of New York, redeemable nevertheless at the option of the said commissioners, or their successors, on the fifteenth day of February or August in any year after the year 1892, with interest at seven per cent. per annum, payable semi-annually on the fifteenth days of February and August in each year, at the same place above mentioned for the place of payment of the principal, on presentation and surrender of the proper coupons for such interest hereto annexed.

In witness whereof we have hereunto set our hands and seals, at Lafargeville, N. Y., this fifteenth day of February, 1872.

GEORGE H. STROUGH, [SEAL.]
SAMUEL GATES, [SEAL.]
SIMON FOLTS, [SEAL.]
Commissioners.

Registered in Jefferson County Clerk's Office April 3d, 1872."

J. STEARS, JR., *Clerk.*

Second assignment of error is as follows: P. 22 hereof.

"For a *second* assignment of error the plaintiff in error insists that the court below ~~error~~ in overruling the objections made by the defendant below to the reading in evidence on offer of plaitiff below the 140 bonds, to which ruling exception was taken. Having proved the signatures to the bonds. "The plaintiff's counsel then offered "in evidence the said 140 bonds of the town of Orleans, "issued by said commissioners. To which the defend- "ant's counsel objected on the grounds: 1st, That on "their face the bonds are void, because not issued in pur-

" suance of the provisions of the laws of 1869, which " authorizes the commissioners to issue bonds payable in " not less than 30 yeares, or the act of 1871, which allows " the issue to be made payable in less than 30 years, but " does not authorize them to issue bonds redeemable at " any time in their discretion. The time of payment " must be fixed, which objection was overruled, and the " defendant's counsal duly excepted to such ruling. The " said 140 bonds were then read in evidence." Record, p. 99."

IV.

The Third and fourth assignment of error can more properly be considered together. Russel B. Biddlecom, a witness on part of plaintiff, testified: " I reside in the " town of Orleans; I was secretary and treasurer of the " Clayton & Theresa R. R Co. in 1871 and 1872, I knew " Messrs. Strough, Gates and Folts, the three commission- " ers," &c. Record, p. 98.

And that the bonds were delivered for stock of said railroad company, of equal amount subscribed for by said commissioners, which he then issued to them April 3, 1874. Record, bottom of p. 100.

And on cross-examination said witness testified: " I " was one of the petitioners in the proceedings before

" Judge Sawyer, and Strough, Gates and Folts were each " also petitioners, and the persons whose names appear in " the petition. I was present at the execution of these " bonds, at Watertown, Jefferson County. * * The " bonds were signed and registered there at clerk's office " in Watertown." Record, p. 102, fol. 129.

After defendants counsel had proved by the record the reversal by the Court of Appeals of the order of the county judge, said Biddlecom on being recalled and examined by defendants counsel, testified: Record, p 183.

" I had the $70,000 bonds in question just before they " were delivered to Mr. Maynard; they were where I " could command them by doing certain things; I handed " over these $70,000 of bonds to Mr. Isaac Maynard on " the 31st May, 1873. This paper was executed by me " as treasurer and secretary, and Mr. Barker as president " of our railroad company, on the day it bears date, and " was delivered accompanying these bonds to Mr. May- " nard."

" The defendant then read in evidence the said " paper, which was in the words and figures following, " viz:

" Utica, N. Y., May 31, 1873.

" Isaac Maynard, *Utica N. Y.:*

" You are hereby authorized, requested and directed to " sell or dispose of the bonds of the town of Orleans de- " posited with you this day as collateral security for the " faithful performance of the contract made by the Clay- " ton and Theresa Railroad company with the Utica and " Black River Railroad company, upon such terms and in " such manner as you shall deem best, and place the net " proceeds, after deducting all charges for negotiation ex- " penses, and costs of sale, or arising from the sale, in the " hands of the Utica and Black River railroad company as

" collateral security for the performance of the contract
' above mentioned.

" A. F. BARKER.

" *Pres't of the Clayton and Theresa Railroad Company,*

" R. B. BIDDLECOM,

" *Secretary & Treasurer Clayton & Theresa R.R. Co.*"

" The witness continued: Record p. 184.

" I knew of the decision of the court of Appeals about " the time it was announced.

" The defendants counsel then asked the following " questions:

" Q. Had you and Mr. Barker, the president of your " road, been actually engaged in trying to procure an en- " actment of a law legalizing these bonds?

"(To which plaintiffs counsel objected as incompetent " unless some notice of knowledge of same was brought " home to plaintiff. The court sustained the objection " and the defendants counsel excepted to such ruling.)

The above question, objection thereto, ruling thereon and exception are the same on which error is alleged in the third assignment of error, p. 23 hereof.

1. It is insisted this question was competent on cross-examination to effect the status and credibility of the witness.

2. It proposed to prove the fact in support of allegations of the answer that the chief officers of the C. & T. R. R. Co., acting in its interest had knowledge of the illegality of these bonds and was one step towards charging knowledge of their illegality on that company and with other evidence would fully charge it, and no objection as to order of proof.

It is very analogous to the question in case of Deitsch vs. Wiggins, 15 Wall. 540–546.

3. It certainly was competent and material. Its materiality as well as competency became most clearly apparent when taken in connection with what immediately follows it on same page of the record, 184, (on page 23 hereof) as follows:

"Q. You and your directors of the R. R. Co., knew of "the decision of the Court of Appeals immediately after "it was made or very soon?

"Ans. I cannot say as to the directors, a certain portion "of them.

"Q. Your president?

"Ans. Yer, sir; and officers.

Q. That is what I mean—Now, Mr. Biddlecome before "you delivered those bonds to Mr. Maynard, had you not "consulted with other directors of your company and "other persons on the subject of getting those bonds out "of the State, as the only means of getting them prosecu-"ted in the United States Court?

"(To which plaintiff's counsel objected, unless "some notice or knowledge was brought home to the "plaintiff, which objection was sustained by the court, "and defendant's counsel duly excepted to such ruling.)

"The defendant's counsel thereupon offered to show "that the witness and other directors of this company "consulted with Maynard and others in reference to a "disposition of these bonds, the object being to get them "out of the State, that they might be sued in the United "States Court.

"(To which offer of proof the plaintiff's counsel ob-"jected as incompetent and immaterial; that it could not "affect plaintiff unless he had some notice or knowledge "of the same. The court sustained the objection, ex-"cluded the evidence, and the defendant's counsel duly "excepted."

Which embraces the rulings on which the FOURTH assignment of error is based.

We insist the question was competent and should have been answered for same reason stated as to question above under 3d assignment of error, and also as competent under allegation of the answer as to conspiracy and collusion to evade the effect of the decision of the Court of Appeals.

The evidence offered was certainly competent under the answer and material.

1. It was a direct offer to show that Maynard, who was the treasurer of the U. & B. R. R. R. Co., and the agent selected to sell these bonds, and the depositary thereof for the benefit of that company, as shown by the written authorities above given, was consulted with and informed as to a project of getting the bonds out of the State and thereby charge that company with knowledge thereof when it is claimed the bonds were handed to Maynard for it as collateral security.

2. It was an offer of material evidence to show that the Utica & Black River R. R. Co., was never a bona fide holder or innocent purchaser of the bonds as was alleged in defendant's answer. See

15 Wall. 540, 546. above cited.

The marginal note thereto is "Evidence which, in con-
" nection with other evidence offered, tends to make out
" a defense, is properly recievable, though it may not itself
" prove all the facts necessary to constitute a defence."

V.

The fifth assignment of error is as follows:

For a fifth assignment of error plaintiff in error insists that the court below erred in overruling the objection and to admission of evidence as follows:

"The defendant's counsel here objected to any testimo-
"ny about the Clayton and Theresa railroad or the build-
"ing of it, which objection was overruled and the defend-
"ants counsel duly excepted." Record bottom of p. 184 and top of 185.

He insists the exception thereto was well taken, and that the said court erred in admitting the evidence given in answer thereto, as to the contracts with the Black River road and its aid in the building of the Clayton and Theresa road and the default of the latter in the performance of the contract, was incompetent and immaterial and ought to have been excluded.

That evidence was inadmissible and incompetent under the plaintiff's complaint on which he had based his action solely on the allegation that the bonds "were duly transferred and delivered to this plaintiff for a valuable consideration parted with by him therefor and that he is a bona fide holder" thereof "for a valuable consideration parted with by him therefor," and had made no allegation that he had succeeded to the rights of any prior bona fide holder and had not alleged either of these railroad companies were at any time such.

If not offered with a view to show the U. & B. R. R. R. Co. a bona fide holder, then certainly it was not competent.

If offered to show a railroad had been constructed through the town, it was not competent, for the validity of the bonds in no manner depended on or could be

affected by that, but entirely on the facts as to whether they were issued under authority of and pursuant to the statutes.

The only power to issue them, if any existed, was conferred by law and not by or through the construction of a railroad with the town.

This court has so decided too many times to need citation of authorities as to it.

What is said above applies to the 6th assignment of errors, which is as follows:

Sixth Assignment of Error.

For a sixth assignment of error, plaintiff's in error insists that the court below erred in overruling its objection to the following question put by plaintiff's counsel below to Biddlecom and in allowing answer thereto, to each of which exception was duly taken, viz:

"Question.—Is there now and was there then due the "Black River Railroad Company a large amount under "those contracts? To which the defendant's counsel ob- "jected on the ground that it was incompetent and imma- "terial, which objection the Court overruled and allowed "the question to be anwered, to which ruling the de- fendant's counsel duly excepted and the witness ans- "wered.

"Answer.—Yes, sir; which we have not been able to "settle up yet." Record, p. 189, fol. 310.

VI.

The 7th assignment of error is found at p. 26 hereof, as follows, viz:

For a SEVENTH ASSIGNMENT of error the plaintiff in error insists that the court below erred in sustaining objection of plaintiff below to and overruling the question put by defendant's counsel to witness Biddlecom to which ruling it excepted as follows, viz:

"Question. Did Mr. Graham and Mr. Maynard partic-
"ipate with you in efforts to get these bonds legalized by
"the Legislature because of the reversal by the Court of
"Appeals?

"(To which the plaintiff's counsel objected as incom-
"petent and immaterial and the Court sustained the
"objection and overruled the question, and the defend-
"ant's counsel duly excepted." Record, p. 189, fol 310, 311.

This question was put after it was proved Graham and Maynard had acted for the Utica & Black River Railroad Company in negotiation of the contracts with the C. & T. RR. Co., and the taking of these bonds as security and related to a time just anterior to delivery of same to Maynard to sell for U. & B. R. RR. Co.

By referring to the written authority to Maynard to sell the bonds, of which a copy is in our preceding fourth point, and dated May 31, 1873, and to the contracts between the C. & T. R.R. Co., and the U. & B. R. R.R. Co., put in evidence by plaintiff in Record pp. 185 to 189, and to evidence of Biddlecom as to indebtedness of the former to the latter company thereon, received over defendant's objection as set out in the 6th assignment and in last preceeding point, and on reading the evidence given by the witness Biddlecom immediately before the ques-

tion set out in this 7th assignment of error, which is found in record p. 189, as follows, viz :

" On re-examination by defendant's counsel the witness " said : Mr. Maynard named in the paper was the Treasu- " rer of the Utica and Black River Railroad and one of " the directors on the finance committee. All the busi- " ness transacted between the two companies on the part " of the Utica and Black River Road was done by Gra- " ham and West, Graham principally, and Maynard and " Thorne. Mr. Graham was the general Attorney and " counsel of the company.

It is apparent that the evidence asked for by the question set down in this seventh assignment of error and excluded was pertinent and material in that, it would tend directly to show that the Utica & Black River R. R. Co. had notice as well as that Maynard had, before and at the time when the bonds were delivered to him of the illegality of the bonds and want of authority to issue them, as established by the decision of the Court of Appeals.

It certainly was competent as tending to show Maynard's knowledge when he received the bonds of that decision. If the Railroad Co. claimed their delivery to him was for its benefit, then such knowledge of Maynard who was one of its chief actors in the negotiation of the contracts and for the bonds and received them for it, was its knowledge and bound it.

As to its competency see 15 Wall. 540–546, above cited.

It is no answer to this, that a verdict was directed, for it cannot be seen clearly that the Court would not have submitted the case to the jury, had this evidence been received.

Its rejection was error, and presumption is it prejudiced the defendant's right.

5 Wall. bottom p. 807, 17, and top p. 639.

On subject of such notice see authorities cited hereafter in points 9, 10 and 12. The exception to the ruling sustaining the objection, was an error calling for reversal of the judgment and a new trial.

pp. 60 and 92

VII.

The admission of the evidence objected to by defendant below, which is assigned for error in eighth assignment was erroneous.

That evidence was neither competent or material, on any question at issue—it could not tend to establish any element of good faith on the part of plaintiff, nor could it tend to show him an innocent purchaser or bona fide holder, for he was proved otherwise by undisputed facts, of not having paid before notice, as shown in our first point, p. hereof 33 et seq.

That assignment is as follows:

Eighth Assignment of Error.

For an eighth assignment of error, the plaintiff in error insisted that the court below erred in overruling its objection to the question referring to the plaintiff below and put by his counsel to witness Maynard, and allowing answer thereto as follows: "Question—Was he a man of "large property? To which the defendant's counsel ob-

" jected as incompetent and immaterial. The objection " was overruled by the court, and the defendant's counsel " duly excepted, and the witness answered :

"Answer—I suppose he was." Record, p. 191, folio " 315. And it is insisted that the exception to such " ruling was well taken."

Its admission was an error, which does not appear harmless.

17 Wall., top 639. 5 Do. bottom 807.

5 6 Wy, 334
7 Hun 88

VIII.

It seems too plain to require argumen tthat error was committed in admitting the evidence over defendant's objection as set out in ninth assignment of error found in p. 27 hereof as follows :

" For a ninth assignment of error, the plaintiff in error insists that the court below erred in overruling objection of defendant below to question put to plaintiff below by his counsel referring to his purchase of the bonds in question, and in allowing answer thereto and excepted to as follows, viz :

" Question—Did you purchase them in good faith ? " To which the defendant's counsel objected as incom- " petent. The court overruled the objection, and allowed " the answer following to be read, to which ruling and re- " ceipt of evidence the defendant's counsel duly excepted.

" Answer—I did purchase them in good faith." Record, p. 197, at bottom and top of 198. And it is insisted said exception to such ruling as well taken."

Whether the plaintiff purchased in good faith was a question for the Court and jury to determine on *facts and circumstances proved*, but the Court thus allowed the plaintiff, interested as he was, to take the prerogative of deciding that question for them, by expressing his opinion as to it; and the court having received the evidence as competent, the presumption is, that it acted on, and was influenced by it, in determining the case and directing a verdict. It is neither apparent nor can it be shown from anything in the Record that the court and its decision was not influenced to some degree, if not wholly thereby, as he failed to state the precise grounds on which he decided to admit a verdict.

The same presumption exists that it influenced the judgment of the court in making its ruling directing a verdict as would of its influence on the jury.

In Derry vs. Cray, 5 Wall., bottom of p. 807, this court declared, and in Smith vs. Shoemaker, 17 Wall., at top of p. 639, repeated the correct rule as follows: " That " while it is a sound principle that no judgment " should be reversed on error when the error complained " of worked no injury to the party against whom the " ruling was made, *it must appear so clear as to be beyond* " *doubt that the error did not, and could not have preju-* " *diced the parties' rights.*"

The rule laid down by Court of Appeals of New York is, " The error must be clearly innoxious."

IX.

As a part of the argument of the tenth assignment of error we ask leave of the court to refer to the argument under the first point commencing at p. 33.

We have there shown that plaintiff before paying anything for the bonds had notice of the defence through the answer served on his attorney in the action as stated in the following :

TENTH ASSIGNMENT OF ERROR.

For a tenth assignment of error, the plaintiff in error, insists that the court below erred in refusing to direct a verdict for defendant, as first requested after close of the proofs next after the following:

" It was agreed that the defendant's answer to plaintiff's " complaint should be considered in evidence and read as " showing notice of its contents to plaintiff. The proofs " were here closed.

" The counsel for the defendant insisted and asked the " court to direct a verdict for the defendant on each of the " following grounds *separately:*

" 1st. It appears upon the undisputed evidence that the " plaintiff had not paid a dollar for these bonds until " November, 1874, and that the answer of defendant in " this case (which is on file) and regarded in evidence, was " served on the 10th of September, 1874, upon his attorney, " which gave him full notice of the defence in this case, " which was notice to the plaintiff and deprives him of " all claim to be an innocent or bona fide holder or " purchaser of the bonds in question.

" The court refused to rule and direct a verdict as so

"requested for defendant, and to such refusal the counsel "for defendant then and there duly excepted."

Record, p. 198, fol. 334–5. And it is insisted the aforesaid exception to said ruling was well taken.

That that answer so served was such notice to plaintiff, see the following cases.

His attorney was his agent engaged in conducting the action and as a part of the proceedings therein the answer was served on him in conformity to the practice. It was his duty to, and the presumption is, he did inform his principal of the same, and the defence set up, and plaintiff is chargeable with notice thereof.

Story on Agency, sec. 140.

Where the plea or notice accompanying it served by defendant on plaintiff's attorney apprises him the trial will involve the examination of a writing, that is sufficient notice to him to produce it.

Hammond vs. Hopping, 13 Wend. 505–7.
17 John R. 293.
13 Do. 92.

Knowledge of the attorney acquired in the transaction of the business of the employment is knowledge of the principal.

Hover as assignee vs Wise 1 Otto. 308. 310.
Griffith vs Griffith, 9 Paige 315.
6 Seld. 178. 185. and cases cited.

a. Before this direction was asked the defendant had proved, by giving in evidence, the duly authenticated copy of the record, under seal and certificate of the clerk of the court, the facts set out in preceding Statement of case, pp. 11 to middle of 15, to wit: that pursuant to sec. 4, of act of 1871, given on p. 8 of the Statement, a writ of certiorari was duly granted, served and return made

thereto in fall of 1871, whereby the record of the proceedings before the county judge, including the appointment of the commissioners, was removed into the Supreme Court, and thereby all power conferred on the commissioners to issue the bonds was superseded and revoked, and the same remained pending in the Supreme Court, at and after the time of the date and actual making of the bonds, and subscribing for stock by said alleged commissioners, and also the record of the judgment of the Court of Appeals, reversing the whole proceeding and order of the county judge, and the order making that judgment the judgment of the court below, declaring the county judge never had authority to make the order and there never was any authority to issue the bonds. Record, p. 102 to 182. And had also proved that the said commissioners were parties petitioners to the record so removed. See evidence of Biddlecom in foregoing 4th point, where he says he was also a party thereto and petitioner; was treasurer and secretary of the Clayton & Theresa Railroad Company, and as such was present at execution of the bonds, and issued the scrip for stock on the subscription, for the bonds, and said Biddlecom had testified, record, p. 184, fol. 299, as follows:

"Q. You knew before the bonds were issued of the "pendency of the certiorari?

"Ans. I did, the same as of other suits.

"Q. State whether you or other directors employed "counsel?

"Ans. I don't know of the other directors; I did for "the Clayton & Theresa Railroad Company, to defend "the certiorari in the Supreme Court."

In Record, pp. 103–105–181–182 it appears the same counsel then employed appeared to oppose the application for certiorari, Sept. 12, 1871, and in all the proceedings in Supreme Court and Court of Appals, showing that

employment was before issuing of the bonds. Said Biddlecom had also testified, Record, p. 190, as follows: "My "office at Lafargeville was the office of the treasurer and "secretary of the C. & T. Railroad Company; all the "directors of our company were petitioners in these pro- "ceedings before the county judge."

And Simon Folts, one of the alleged commissioners, called on part of defendant, had testified, (Record, p. 182–3), as follows:

"About the time of the issue of the bonds the "commissioners had come to talk about having taken "counsel as to certiorari and right to issue bonds. Mr. "Gates told me had a talk with Judge Hubbard the day "before the time we met to issue bonds.

"Q. About what?

"Ans. O, in case this certiorari, in case there was one, "about the certiorari suit, in case there was one, we heard "by rumors that there was.

"Q. Was Mr. Strough present on that occasion?

"Ans. I think he was.

"Q. You had learned it in the fall, or heard it from "Mr. Bort and others?

"Ans. Yes, sir; there was a rumor.

"Q. That there was a certiorai brought from the pro- "ceedings before Judge Sawyer?

"Ans. The rumor was they were going to or had "done it.

"Q. Didn't you learn long before issuing these bonds "here there had been?

"Ans. Merely by rumor.

"Q. By rumor do you mean it was the subject of conver "sation among people generally where you happened to be?

"Ans. No; not a subject of conversation but by a few "of the men in town.

"Q. You heard it spoken of?

"Ans. Heard it spoken of by a few leading men in town.

"Q. Now, Mr. Folts, you heard the decision of the "Court of Appeals about the time of its being announced?

"Ans. I heard it, but never saw it in print; never "could get hold of it.

"Q. How soon after that did you, Gates and Strough "meet Mr. Biddlecom?

"Ans. We happened to be in the office there all to-"gether one evening.

"Q. Biddlecom's office?

"Ans. No, sir; the R. R. office.

"Q. The office of Biddlecom, which was the treasurer's "office?

"Ans. Mr. Strough spoke and said to Biddlecom, these "bonds are worthless now, and, said he, now you better "give us up those bonds and we will give you up your scrip; "and Mr. Biddlecom made reply he did not know as he "could get them. It was soon after the Court of Appeals "decision, and must have been the latter part of Febru-"ary 1873. I was one of the petitioners before the "county judge.

"On his cross-examination the witness said:

"I never knew what this proceeding I heard talked "about was, more than what I heard said. There was "no notice or paper served on me. When we came to "subscribe, Strough said he had consulted counsel, and "he said that he advised him that we were all right to "issue. It was an accidental meeting at Biddlecom's "office. Did not go there for any particular purpose. "Strough kind of laughed when he spoke. I did not "have the scrip there. There was no offer to produce "the scrip. There was nothing more done about it."

On his re-direct examination the witness said:

"I never had the scrip in my possession to keep. Mr. "Strough took it, and I don't know but he had the scrip

" with him that evening. He did not suggest that he " had."

Showing this commissioner understood that after hearing of the decision reversing the county judges order, they offered to rescind and give up the scrip for stock and get up and cancel the bonds. His evidence shows the town or any of its officers never had the scrip, but Strough one of the commissioners took it when issued, and so far as he, Folts, another commissioner knew, still always retained it. Biddlecom did not deny the offer thus sworn to by Folts, but on examination by plaintiff's counsel testified, Record p. 190 only " that there never was any formal notice to " me as an officer of the company to return this scrip and " get the bonds. I don't dispute what Mr. Folts said, but " I dont recollect it." An then on cross-examination he expresses opinion he would have recollected the offer if one made.

It is significant that this witness is careful in effort to deny the formal offer to say he was not addressed by these commissioners as " Mr. Treasurer and Secretary of the C. & T. R.R. Co.," &c., in making the offer. Few men approaching him on business with the Co., would do so, and those laymen the commissioners who had been misled into issuing the bonds by the counsel employed by the R.R. Co., through Biddlecom did not suppose it was necessary.

It is also significant that the counsel named by witness Folts as having advised to issue the bonds, was the same named in all the court proceedings opposing the certiorari in the employ of the railroad company as testified to by Biddlecom. This notice of the then pendency of the certiorari, is shown to all the commissioners and to the C. & T. R.R. Co., at and before the time of issuing of the bonds and subscription for and issuing of the stock scrip so that that R.R. Co., was not a bona fide holder of the bonds.

When defendant made this request set out in 10th assignment of error undisputed and clear proof had been given that the Utica & Black River Railroad Company and Issac Maynard each and both, before and at the time of the delivery of the bonds to Maynard with the written authority to sell them, which is set out in the above point FOUR, had notice of the decision of the Court of Appeals and its effect as above stated and also of said certiorari proceedings pending at date and issue of the bonds.

This appeared by following evidence, viz: After the contracts between these two railroad companies was read in evidence R. B. Biddlecom, and Record p. 189–90.

On re-examintion by defendant's counsel testified as follows, viz:

"Mr. Maynard, named in the paper, was the treasurer "of the Utica and Black River Road and one of the direc- "tors on the finance committee. All the business trans- "acted between the two companies on the part of the "Utica & Black River road was done by Graham and "West; Graham principally, and Maynard and Thorne. "Mr. Graham was the general attorney and counsellor of "the company.

On re-examintion by plaintiff's counsel the witness continued:

"We had been talking about giving them these bonds "as security since the first contract. The negotiations on "the part of the Utica & Black River road were generally "by West and Thorne. Seldom had anything to do with "Graham. He was at times there, but the talk was gen- "erally between ourselves and Mr. West and Thorne and "sometimes Maynard. The delivery of the bonds and the "making of the agreement dated May 31, 1873, was at "Bagg's Hotel, in Utica, before we finished the agree-

"ment. I don't know that the decision of the Court of "Appeals was the subject of conversation on that occasion "I can't tell what was said about disposing of the bonds "by Maynard. I don't recollect anything said. I won't "swear there was not something said about disposing of "those bonds to avoid the effect of the decision of the "Court of Appeals.

"Barker and I talked with those acting directors on "the 31st of May, and a number of times before, on the "subject. I talked with Graham once soon after the de- "cision about the decision of the Court of Appeals. I "talked with Maynard in reference to the matter, and "also with Mr. West, sometime before the 31st of May. "I have no recollection of talking with Thorn; talked "with no other of directors with reference to the decision "of the Court of Appeals; it was not an official but a "personal interview I had; Mr. West had some of these "bonds and returned them to me, most of them before "the decision of the Court of Appeals. He had made "no advances on them. I sold some bonds in Lewis "county; I paid them back the money; it is possible "they came through West. I received some through a "banker; I think the banker sent them to me and I "paid him the money."

Isaac Maynard, a witness called and sworn for the defendant, testified: Record, p. 190:

"I was treasurer of the Utica & Black River Railroad "Company in 1873, and have been for six or seven years. "I am the Isaac Maynard mentioned in the writing given "by Barker and Biddlecom for the sale of these bonds. I "had heard before the receipt of these bonds under that "agreement of the decision of the Court of Appeals "with reference to the bonding proceedings. I had heard "the rumor ot the decision.

"I went to Albany, in March or April, 1873, to see "about the passage of an act to legalize town bonds gene- "rally, including these bonds. I did not go officially as "an officer of the railroad company. Mr. Graham asked "me to accompany him to Albany for this purpose. He "had been the attorney and counsel of, and a director and "member of the finance committee of our railroad com- "pany for years. I paid the expense of Graham and my- "self as treasurer of the railroad company out of the com- "pany funds. I want to qualify by stating that it was to "be charged to the C. & T. Railroad Company. I was "not acting in concert with the Clayton and Theresa folks "—Barker and Biddlecom. Mr. Graham went down for "them. My impression is that the treasurer of the other "road said if Graham would go down he would pay his "expenses, and I as treasurer paid those expenses. The "other road did not pay me those expenses afterwards. "I had some Wilna bonds to legalize. There was no "litigation about them. The legalization of these bonds "here was the great object in going down."

On cross-examination the witness testified:

"I did not go to Albany at the request of my company. "It was at the time when an act legalizing generally all "bonds that had been issued for value.

"There was a large number of people there, Savings- "bank people. Mr. Swan of Poughkeepsie, was there, "and others. I was with Mr. Graham when he went be- "fore the committee."

"Edmund A. Graham, a witness called and examined "on behalf of the defendant, tetified as follows:

"I reside at Utica; have been a director of the Utica "and Black River Railroad company since its organiza- "tion, and have been since its organization its attorney, "and been a member of its finance and executive commit-

" tee for a number of years. The first talk about these " town of Orleans bonds that I remember was at the time " of the making of the first contract, February 1872, when " there was talk of our company aiding to dispose of the " Clayton and Theresa Railroad company bonds, both " their town bonds and their mortgage bonds; I think " the subject was mentioned to me by R. B. Biddlecom " after that, and before May 1873, occasionally when we " met, not more than twice. I drew the contract of Feb- " ruary 26, 1872, and May 31st 1873, between the two " companies.

" Isaac Maynard, Barker, Biddlecom and I went to Al- " bany, April 8, 1873, to see committee on railroad with " view to get a bill favorably reported to confirm the val- " idity of these town of Orleans bonds. About that time " I heard about the decision of the court of appeals as to " them—heard, I think, from Mr. Biddlecom just before " that.

" Prior to the issue of the certiorari as to these bonds, " I think it was, I was at the Woodruff House at Water- " town, and had a talk with Mr. Levi H. Brown, in which " Mr. Brown stated that he intended to bring a certiorari " as to these bonds, and stated the grounds to be that he " thought the affidavit of the assessors was defective and " that the assessment was void, and that I replied I " thought the jurisdiction of the county judge not affected; " that this could be supplied by evidence. I think that was " before, but I am not positive, and can't say certain that " it was not pending the certiorari proceedings.

" I am an attorney and counsellor-at-law in this State " for upwards of thirty years.

" Cross-examined by plaintiff's counsel:

" During late summer or the fall of 1872, I heard from " Mr. Biddlecom that the Clayton & Theresa road had

" issued to the town of Orleans stock for the $80,000.00 of
" bonds issued by the town to aid in building the road.

" Re-direct examination :

" I was in Jefferson county in year 1872, about three
" or four times. Maynard, Thorne, West and I trans-
" acted most of the negotiations between the companies
" as to these contracts in behalf of the Utica & Black
" River Railroad Company, Biddlecom, Barker and Reese
" acted for the Clayton and Theresa Railroad Company.

" E. A. GRAHAM.

" The defendants' counsel then read in evidence the
" testimony of De Witt C. West, taken under stipula-
" ation.

" De Witt C. West, being duly sworn and examined as
" a witness on the part of the defendant, says :

" I reside at Lowville, and have been director of the
" Utica & Black River Railroad since 1869, and a mem-
" ber of the finance and executive committee four years or
" more, and president since June, 1873, of that company.
" In 1872 and in 1873, the finance or executive commit-
" tee, were John Thorn, Edmund A. Graham, Russell
" Wheeler, A. J. Williams and myself. Mr. Isaac May-
" nard has been treasurer of the road for the past five
" years. Each member of the finance committee was a
" director.

" Ques. State whether there was any, and, if so, what,
" action of the board of directors or finance committee in
" relation to placing in the hands of Isaac Maynard the
" bonds in controversy in this suit ?

" Ans. No formal action ; I know of no record of any
" action by the finance committee. I know of the fact
" that the bonds were delivered to Mr. Maynard to be
" sold. My best recollection is that the majority of the
" finance committee knew of it, but I am not sure. I

" think they knew and approved of the delivery of these " bonds to Mr. Maynard as security for the Utica & " Black River Railroad Company, but there was no for- " mal record of their action—no formal vote or record. " It is not generally customary for us, as finance commit- " tee, to make a record or vote or action of the commit- " tee.

" Ques. State whether you and other members of the " finance committee, and which of them, in March, 1872, " participated at Albany in efforts to procure the enact- " ment of a law by the legislature of New York, legal- " izing the bonds in question. (Objection by counsel for " plaintiff to answer to this question, as incompetent and " immaterial.)

" Ans. I participated in trying to get a general law to " legalize all town bonds issued in aid of railroads, and " I did not in any other way. Mr. Edmund A. Graham " and I appeared before the committee. Neither of us " made any argument before them. Mr. Swan, not a " director of or interested in our road, made an argument. " This, I think, was not in March, but it was in May— " fore part of May or last of April. It was before the " Senate committee. Mr. Woodin argued the question " against Mr. Swan. This was the only time I appeared " before the committee.

" Ques. Were the bonds in question a portion of those " desired to be legalized?

" Ans. I suppose so; it was intended to legalize all " bonds which had been issued. Mr. Barker, president, " and Mr. Biddlecom, treasurer of the Clayton & Theresa " Railroad Company, also were before the committee.

" Ques. State when you were first apprised of the pro- " ceedings for bonding of the town of Orleans to aid in " constructing the Clayton & Theresa Railroad company?

" Ans. It was just previous to making the contract of

" February 26th, 1872, at that time they opened negotia-
" tions with us to aid in building the road. Heard from
" Biddlecom and Barker there that the town had been
" bonded for $80,000·00, in aid of their road,—for build-
" ing the road.

" Ques. State, according to your best recollection, the
" date the negotiation first commenced between the two
" railroad companies for turning over to your company
" the bonds in question ?

" Ans. It was about the time negotiations were opened
" for the second contract, dated May 31, 1873. Mr. Bid-
" dlecom and Mr. Barker both spoke to me about it.
" That I think was in May, 1873. I know it was pre-
" vious to this contract. I think Mr. Maynard was pres-
" ent but I am not positive. I think Mr. Thorn was pres-
" ent. There were a number of talks about it.

" Ques. Was there no proposition or negotiation be-
" tween the two companies in reference to said bonds
" previous to May, 1873, or prior to the decision of the
" court of appeals in reference to those bonds in Febru-
" ary, 1873 ?

" Ans. I cannot tell because I was not president of the
" road then. None to my knowledge.

" Ques. State whether previous to April, 1873, you
" knew there was litigation in the courts in reference to
" the proceedings for bonding the town of Orleans ?

" Ans. I heard it immediately after the decision of the
" court of appeals as to them, that there had been litiga-
" tion about the bonds, that I heard from Mr. Biddlecom.
" I never heard before then that I recollect. Heard of it
" a number of weeks before the first of May, 1873.
" About time of first contract with our road the officers of
" the Clayton & Theresa Road talked with the officers of
" our road about the taking the bonds and selling them
" for them. Some of the bonds were delivered to me to

" sell, but I did not sell them, and I returned them. My " impression is, that one or two of those received were by " me returned after the decision of the court of appeals, " and the rest before. Between February, 1872, and " May, 1873, Barker and Biddlecom spoke to me two or " three times about selling these bonds. It may be " oftener than that. I think Mr. Maynard was present, " but I am not sure about it. They addressed the con- " versation to me. One, and perhaps more of these con- " versations was at the office of our company in Utica. " My best recollection is that it was the one at the office " in Utica at which Maynard, according to my best im- " pression, was present.

" Do you recollect the reply that you or Maynard gave " them?

" Ans. The general reply was that we had our own " bonds to sell, and could not take them. I cannot tell " how long I kept the bonds that were sent to me, I kept " them, according to my recollection, several months. I " never knew of the litigation about them until Mr. Bid- " dlecom told me of it.

" Ques. During year 1872, and early part of 1873, did " you sell town bonds issued in aid of railroad companies?

" Ans. Our company sold no town bonds at that time. " when I said I never sold any of these bonds, I meant that " some that I had sold were, as soon as I heard of the " decision of the Court of Appeals, taken back by me " and returned. I had sold, I think, four of them. I " had interest in having town of Lowville bonds and " the town of Wilna bonds legalized in 1873, when be- " fore this committee. There was no litigation about " those town bonds. There was a great many people in- " terested in having all the bonds theretofore issued con- " firmed. One object I had in trying to get the law " passed was by legalizing these bonds, and the other

" bonds to aid the Clayton & Theresa Road in building
" this road.

" Cross-examined by plaintiff's counsel:

" This Clayton & Theresa road was a connecting road
" with our road and intended to be used with it. Previ-
" ous to execution of the first contract they informed us
" that the town of Orleans had been bonded for $80,000,
" to aid in building their road. They commenced build-
" ing the Clayton & Theresa Road in 1872. It was first
" run in October 1873. It was not then fully completed.
" We then took possession of it and completed it. It
" runs through the town of Orleans, I think about six or
" seven miles right through the centre of the town,
" and is the only railroad in the town. There are two
" stations in the town of Orleans. At the time we ne-
" gotiated the second contract the Clayton & Theresa had
" failed to perform the first contract, and they proposed
" to leave these bonds with Maynard as security that they
" would perform the contract, and as I understood they
" were delivered to Maynard as security that they would
" perform the contract. I had been informed by Barker
" and Biddlecom before the second contract, and in 1872,
" that the Clayton road had issued $80,000.00 of stock to
" the town of Orleans for these bonds.

" Re-direct examination:

" The directors of our road who did the business with
" the Clayton road were Mr. Graham, Mr. Maynard, Mr.
" Thorn and myself. They generally did the business for
" our road in the matters between the two roads.

" DEWITT C. WEST."

It also appeared that each of these railroad companies, and the officers thereof were citizens of the State of New York, and chargeable with knowledge of the statutes referred to, authorizing the petition for bonding and the

certiorari to review the proceedings of the county judge, as well as of all the proceedings thereon, including the judgment of Court of Appeals, and the order making it the judgment of the court below, reversing the order of county judge. The attention of Maynard and the U. & B. R.R. Co. was also called to these statutes by the reference thereto in the bonds.

Sec. 2 of the act of 1871, (page 8 of *Statement*,) required the records of proceedings before county judge to be filed in clerk's office of Jefferson County, and other laws hereafter referred to required the application and order for writ of certiorari and return thereto as well as the record of the judgment of Court of Appeals, to be there filed also, and all of them were there filed, as the evidence shows, the last thereof March 19, 1873.

On examining these records the U. & B. R.R. Co. found, that at date of the bonds February 15, 1872, the certiorari had superseded all supposed authority to issue them.

This railroad company was bound to, and presumptively did, look to see whether there was, in fact, authority to make these bonds for a public corporation purporting to have been made by virtue of an agency, created under these statutes and proceedings, and that on looking it found the authority revoked and superseded prior to and not existing at date of bonds, February 15, 1872, by the certiorari and return thereto filed the fall before.

" It is the settled doctrine of this court, that the laws " which subsist at the time and place of making a con- " tract, enter into and form a part of it, as if they were " expressly referred to, as incorporated in its terms. " This rule embraces alike those which affect its validity, " construction, discharge and enforcement."

Edwards vs Kearzey, 6 Otto. at 601.
2 How. 608, 612.

Resident of State chargeable with knowledge of its laws.

Bk. of C. vs Dodge, 8 Barb. Sup. C. R. 233–7.

We refer to other authorities cited in subsequent points on this. ~~at p. 92 - 94~~

This argument relating to one of the several requests for direction of verdict for defendant, separately made, is referred to as applicable to the other requests mentioned in our next point :

X.

Which relates to the requests, rulings and exceptions contained in the *Eleventh* Assignment of Errors, which is found at preceding, pp. 28 to 31, and the requests in Record, pp. 198 to 200.

The grounds on which verdict for defendant was requested are fully set out in said assignment of errors, and were in brief as follows :

1. That the adjudication of the county judge having been reversed and adjudged void, the bonds were issued without authority and void.

2. That because the bonds were issued pending the certiorari proceedings wherein the whole proceedings before the county judge was declared void, the bonds were void.

3. That by the service and return of the certiorari the

whole proceeding before the county judge was removed into the Supreme Court for completion, and revoked and superseded all authority to issue the bonds, and there was an utter want of authority to issue the bonds.

4. That the proceedings before, and decision of the county judge, were void, because had under the law of 1871 upon a petition not in conformity with that act, but with the law of 1869.

5. That the law of 1871 repealed sec. 1 of law of 1869, giving jurisdiction to act on such petition.

6. That the Utica & B. R. R. R. Co. was chargeable with notice, when the bonds were delivered to Maynard, of the record of the proceedings including that of Court of Appeals, showing want of jurisdiction in county judge to make the order.

7. That Maynard was chargeable with like notice.

8. That plaintiff was chargeable with like notice and thereby had notice there was no authority to issue the bonds.

9. That the C. & T. R. R. Co. had *actual* notice of the issuing of the bonds pending the certiorari and the bonds in their hands were utterly void.

10. That the Utica & B. R. R. R. Co. had actual notice of the illegality of the bonds through the notice to Maynard, West and Graham, and of the reversal by the Court of Appeals.

11. That the laws under which the proceedings were had were unconstitutional.

12. The authority to issue the bonds rested entirely upon the record of the proceedings in the clerk's office, and plaintiff and all others dealing with these bonds were

bound to inquire and look for that authority, and in looking they would find none, therefore plaintiff had notice the bonds were issued without authority.

The court below refused to direct a verdict on "aforesaid grounds or requests or *upon either of them*," and defendant excepted to such refusal.

The request for direction was upon "each of the following grounds separately," hence the exception is available.

These several requests were based on the facts proved in the case as stated in the preceeding point IX, to which reference is made.

As to first request, the Court of Appeals, the highest court of the State, in reversing the proceedings and order of county judge, determined that there was no jurisdiction to make the order appointing commissioners, and never any authority to issue the bonds.

People ex rel. Irwin vs. Sawyer, 52 N. Y., 296.
Briggs vs. Bowen, 60 N. Y., 454
People ex rel. vs Smith 55 NY. 135–8.

holds this proposition precisely.

So has the N. Y. Supreme Court. Biddlecom vs. Newton, 13 Hun. 582, 588. The Court of Appeals have decided the want of jurisdiction upon the petitioner under act of 1871, and the repeal of act of 1869, as we requested in 4th and 5th requests.

55 N. Y. 135–8.

As to the other points raised here, we refer to authorities cited under our succeeding point, XII. Commencing at p. 82

XI.

The twelfth assignment of error is found herein, at p. 31–32.

Error is therein alleged that the court below refused to rule that there was not sufficient evidence to warrant its holding as law, the railroad companies referred to or plaintiff was bona fide holder of the bonds. This was in effect a protest against directing a verdict for plaintiff and may be considered with that in next point. Thereupon defendant's counsel requested, and the court refused the request to submit to the jury questions as follows:

" 1. Whether either or both of said railroad companies, " the Clayton & Theresa railroad company, and the Utica " & Black river railroad company was bona fide holder of " said bands.

" 2. Whether the plaintiff is a bona fide holder of said " bonds."

The court refused each of said requests, and defendant's counsel excepted.

These requests were all based on the evidence referred to in the preceding points, especially I and IX, the argument on which is referred to as part hereof.

A fair test of the correctness of the refusal to submit those questions to the jury, is whether if all the facts proved had been alleged in plea and admitted by a demurer thereto, is there any doubt that in such case judgment must have been given that the C. & T. R. R. Co. was not a bona fide holder? See the evidence of Biddlecom and Folts quoted in point IX.

Or upon such test can it be a question that the U. & B. R. R.R. Co., would be adjudged not a bona fide holder?

See evidence of Maynard, Graham, West and Biddlecom quoted in same point.

Therefrom it appears Maynard, Graham and West and one Thorn had transacted all the business between the two companies, and all of them but Thorn, after they knew of decision of the Court of Appeals, (having been, some of them, during more than a year talking of receiving these bonds from the C. & T.R.R.Co.) had been to the Legislature trying to secure enactment of a law legalizing them because of the effect of that decision. Graham says he, Maynard, Barker and Biddlecom went to Albany April 8, 1873 for that purpose.

West says he and Graham went before the committee at Albany for that purpose in forepart of May or last of April 1873, and he having had some of the bonds had returned them on hearing of the decision of Court of Appeals. West says negotiations for turning the bonds over to this company commenced about the time of the second contract which was May 31, 1873. Maynard paid expenses of himself and Graham out of funds of the company.

West says he and a majority of the finance committee knew and approved of the delivery of the bonds to Maynard as security for the company and he, Graham and Maynard were on and a majority of that committee. West was president, Maynard Treasurer and Graham the General counsel and attorney of the company, all directors and had transacted chiefly the business relating to the contract and bonds turned over as security thereon.

We submit that the court below could not direct a verdict against this evidence but should have submitted to the jury the question whether the U. & B. R. R. R. Co., was a bona fide holder; whether it had notice through the knowledge of these agents of it; whether on the 31st of May when arrangement was consummated for delivery of the bonds to Maynard, they had forgotten or still had in

mind their knowledge as to the litigation and decision affecting these bonds.

It was error for the court to take from the jury that question on the assumption, they had forgotten so recent a transaction, as it must have done, instead of leaving the question to the jury as requested. #

We submit the court erred in not submitting the question to the jury to decide and to draw conclusions from any conflicting inferences there might arise from this evidence.

Parks vs Ross, 10 How. 362, 373.
Merchants Bk. vs State Bk. 10 Wall. 604, 637.
Improvement Co. vs. Munson. 14 Wall. 442. 448.
Pleasants vs Fant, 22 Wall. 116, 121.
Commissioners vs Clark, 4 Otto 278. 284.

9 Wall 197-201
9 Do. 248-253

See authorities cited on p 92 supra

XII.

The following is found at p. 33 hereof as the

THIRTEENTH ASSIGNMENT OF ERROR.

For a thirteenth assignment of error, the plaintiff in error insists that the court below erred in directing the jury to render the verdict for plaintiff below and against defendant, to which said defendant there excepted, as follows, viz :

" And thereupon the said court directed the jury to " render a verdict in favor of the plaintiff and against " the defendant for $87,776.43, to which order and direc- " tion of the court the counsel for the defendant then and " there duly excepted." Record p. 200, fol. 340.

And thereupon the jury under such direction rendered the verdict. It is insisted such exception was well taken.

We refer to argument and evidence presented in foregoing points 1, 9, 10 and 11 as part of argument of this one and to authorities there cited.

The court erred in directing the verdict, because,

1. It was proven the plaintiff was not a bona fide purchaser or holder of the bonds, as is shown in our first point, p. 33 to 43 and in 9th point, pp. 59, and 60 hereof.

2. Not being a bona fide holder, the bonds were open to all defences existing against them in the hands of the original holder, the Clayton & Theresa Railroad company, unless it appeared plaintiff had succeeded to the rights of some subsequent bona fide holder thereof.

Cunningham vs. Clark, 4 Otto, 278-285.
McClure vs Township of Oxford, 4 Otto, 429 432.

4 Otto at 359

3d. It appeared that the bonds were void in the hands of the C. & T. R. R. Co., because when it received them at time of their execution, and issued the stock scrip therefor through its Treasurer, it had actual notice that the certiorari was then pending in the supreme court.

N. Y. & N. H. R. R. Co. vs Schuyler, 34 N. at p. 84.

1 John Chy R. 157- 4 do. 38

That company by its counsel defended that proceeding, was heard therein, was at least in privity with the

parties thereto, and was concluded by the judgment therein.

36 Barb., at 385, and cases cited.
1 Otto at 534 and cases cited.

Each commissioner was a direct party to the proceedings as a petitioner, and thereby had notice of the writ, and Folts swears they had heard of it, and talked about it when they met to issue the bonds, and the attorney who appeared for them and other petitioners in the proceedings before county judge, as the record shows, was served with notice of the application for the order granting the writ, and they appeared by such attorney in defence of the writ.

The People vs Brower, 4 Paige 405.
Hill vs Head, 3 Edwards Chy. R. 236.

Such writ so allowed, served and filed, and return made, utterly extinguished all supposed authority conferred by the adjudication and appointment of the county judge, so that their acts thereafter were utterly void.

Case vs. Shepherd, 2 Johns. Cases 27–8.
Bacon's Abr. Title "Certiorari" G & K.

Bac. Abr., "all sub-sequent proceedings on the record whether before or after the return of the certiorari are erroneous by force of the words, *coram nobis terminari volumus et non alibi*, in which respect a certiorari is of greater force than a writ of error."

Certiorari suspends the effects of the judgment of the justice in summary proceedings in everything except the execution of the warrant. (This is under statute providing it shall not stay warrant.)

3 Robt., 489.

and every proceeding afterwards is void.

Comyn Dig., Certiorari E.
Viner's Abr., Certiorari O.

So every act done by their authority after its delivery is void.

Yelv. 32.

Such is the effect of the decision in Briggs vs Bowen, 60 N. Y. 454-6, in holding all proceedings after allowing writ illegal.

The certiorari removes the record itself in contemplation of law.

3 Caines, 86-87.

The record itself is returned and not a transcript.

Woodcraft vs Kinasson, 2 Atk. 317 decided in 1742, note, and cases cited.
Rex vs. Yatt, 2 Salk. 565.
5 Sandf. S. C. 249; 1 Halstead 161; 13 Wend 664.
22 Wend. 590.
39 N. Y. 506.

Same as does writ of error before execution.

Perkins vs Woolaston, 1 Salkeld's R. 321.
1 Wend. 81 and cases cited.
3 Hill. 239.
25 Wend 157-167 in Court of Errors.

And the court could not by any order prevent such suspension as the effect of the writ.

Conover vs. Devlin, 24 Barb. 636.
Affirmed in 26 Barb. 429.

Patchin vs. Mayor of Brooklyn, 13 Wend. 664, shows service of writ on the commissioners not necessary to its operation as an entire supersedeas.

In Lauritz vs. Dixon, 5 Sandf. S. C. 249, and cases cited, is correctly stated the rule, that, (except, as in case of summary proceedings, where the statute has otherwise provided,) the effect of the writ is to suspend the judgment and its effect in every collateral matter.

People ex. rel. the Brooklyn School Commissioners vs. Kearney 21 How. Pr. R. 74, at General Term decided in 1861, holds same doctrine, and further that these alleged commissioners were liable for contempt of court in thus acting pending the writ, and cites

5 Seld. 263–277–278.

as holding service of writ on commissioners not necessary.

In Baily vs. Town of Lansing, reported in 2 N. Y., W. Digest, 562, Judge Wallace decided that upon allowance of the writ the judgment, to review which it issues, is suspended, as to proceedings under it, and as to all collateral matter as completely as though it had never been rendered, and held bonds issued after its allowance void.

See also 12 Modern, p. 385, case 644.
do p. 601, case 392.
do p. 643, case 1044.
do p. 188
do p. 390.

Such was the rule at common law, and as adjudicated by the courts of New York as to the effect of the certiorari as to the invalidity of the bonds, and this court will follow it.

6 Otto, at 601.
2 How. 608.
19 Wall. 635–9.
Supervisors vs. U. States, 18 Wall. 71–82, and cases cited.
Leffingwell vs. Warren, 2 Black 599–603.
Suydam vs. Williamson, 24 How. 427.
Township of Elmwood vs. Marcy, 2 Otto 289.

a. Sec. 17, Article I. of the Constitution of the State of New York, adopted in 1846, provides that "such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the 19th April, 1775," as have not ex-

pired, been altered or repealed, and not repugnant to said constitution "shall be and continue the law of this State, subject to such alteration as the Legislature shall make concerning the same."

Similar provisions is contained in § 13 Art. VII of the constitution of 1821.

The Legislature has never modified or altered the rule of the common law as to such effect of a certiorari, except in some criminal cases, summary proceedings and to review judgments of justices court prior to code of 1846, and in special cases, not including the one in question.

That the writ was properly issued in the name of the people, on behalf of a majority of the taxpayers of the town, whose rights were infringed by the decision of the county judge, and the court so adjudged. See

Wildy vs Washburn, 16 J. R. 49.
People ex rel Sheridan vs Andrews 52 N. Y. 445, 450.

And it was properly directed to county Judge and clerk.

7 Cow. 158.

b. No right under the appointment ofthe county judge had become vested when certiorari issued and it revoked and abrogated all power conferred by the appointment as would the taking effect of a constitutional amendment before subscribing or issuing the bonds, prohibiting so doing, as held by this court.

Town of Concord vs. Portsmouth Saving Bank, 2 Otto. 625–7.
County of Moultrie vs. Rockingham, Ten. C. S. B., 2 Otto, 631.
Harshman vs. Bates county, 2 Otto. 569.
Falconer vs. Jamestown R.R. Co., 69 N. Y., 491–502.
Aspinwall vs. Commissioners county of Davies 22 How. 364, 376.

c. There is no proof that any commission or appointment in writing made by county judge or any copy of the record, was delivered to either Strough, Gates or Folts, nor that either was ever shown to or relied upon by any of the parties dealing in the bonds. It was not proper for the county judge to issue any commission to commissioners until the lapse of time for application for certiorari, provided for in sec. 4, of act of 1871.

d. The provision in statute, § 4, p. 4 above, as to signing and certifying the bonds confers no power to certify anything contained in the bonds, save that the same are executed under their hands and seals, and whether under the corporation or their individual seals.

e. Nor does the registry of the bonds under § 8, p. 5, by county clerk, alone furnish any ground of estoppel, especially as to parties not being bona fide holders. The law does not declare that any evidence as to validity or regularity of the issue of the bonds. County clerk is not, and these statutes in no manner purport to make him, an officer or agent of the town for any purpose.

f. On the contrary § 2, p. 7-8 above requires the record of the judgment and appointment of the county judge to be filed in county clerk's office, as a record and notice thereof to be published for three weeks, and § 4, p. 8, provides for review by certiorari to be applied for within sixty days after the last publication of said notice, upon notice.

That record is thus made by this law made the sole evidence to be sought after by dealers in the bonds, looking for the authority to issue them.

McClure vs Township of Oxford, 4 Otto 429.

But by § 401 of Code of Procedure of New York, that "application for an order for the certiorari is a motion," and by § 400, the written direction of the court

therefor was "an order," and could be granted only by court of Special Term.

Supreme Court Rule, 47 of 1871, and also those of 1849, 1852 and 1868 the same.

10 How. Pr R. 181 and cases cited.
2 Hun. 70.
15 Wend. at p. 206–7.
19 do. 640.
2 Burrill's Prac. p. 196.

That application was required, by both the English and New York Supreme Court practice, to be filed, and the order entered in the clerk's office, where was filed the record of the adjudication to be brought up and reviewed.

Graham's Prac. 2d Ed. 683–4.
5 Cowen R. 12–13.
8 Hun. 34.
1 Harrison's Digist. p. 1511.
N. Y. Sup. Court Rules 4 and 7 of 1871.
do do do do 3 of 1858.

Those rules were adopted pursuant to § 470 of N. Y. Code of proceedure.

By § 469 of that code, this old practice was expressly retained, it not being inconsistent therewith.

At common law, which is retained by constitutional provision above cited, all papers used before the court, were required to be filed and all orders made by it, to be entered by its clerk.

The same requirement is contained in chapt. 61 of laws of N. Y. passed April 7, 1785, and by chapt. 43 of laws of 1812, and chapt. 182 of laws of 1823, and by chapt. 42 of laws of 1829.

Sec. 20, Act 6, of Constitution of N. Y., declares that "Clerks of the several counties shall be clerks of the Su- "preme Court, with such power and duties as shall be "prescribed by law."

They are also clerks of county courts.

Vol. 3, Ed. 6 R. S. of N. Y. p 236 sec. 20.

Such clerk was required also to keep a book properly indexed in which he should enter the title of all actions and special proceedings, with proper entries denoting the paper filed and order entered therein and when and where filed and entered.

Sup. Court, Rule 11 of 1871.
do do do 4 of 1849–1852–1856.
do do do 9 1858.
which were adopted pursuant to said section 470 of the code.

In this case it appeared the county clerk complied with this requirement, and that the application was filed and the order for the writ was entered Sept. 30, 1871, and the writ was filed Oct. 14, 1871. Record, p. 105–107–181 at bottom.

The return of county clerk to the writ was made Dec. 22, 1871. Record, p. 107. And that of the county judge, Dec 22, 1871. Record, p. 126–7.

The judgment of Supreme Court on the certiorari was entered July 1, 1872. Record, p. 179.

Therefore whoever, at or any time subseqent to the date of the bonds, searched for the record of the adjudication of the county judge and appointment of the commissioners for their authority to act, found the entire record removed into the Supreme Court; and if he found it still in same clerk's office, he also found it annexed to the writ of certiorari, the return of the county clerk and county judge thereto, and he also found the title of the book, containing a reference to the order granting said writ, and the time and place when and where same was entered, and also found the order. Record, p. 103–4.

County of Morltire vs Savings Bank 2 Otto 631–6.
McClure vs Township of Oxford, 4 Otto 429–432.

The Clayton & Theresa Railroad Co., and the Utica & Black River Railroad Company., and Maynard, in addition to the notice above shown they severally had, each, being a citizen of the State of New York, was charageable with notice of the certiorari pending at date of the bonds, by this record, made pursuant to the law, of which they were each bound to take notice.

The statute referred to in the bonds gave notice that the authority to issue them would not be complete until the time had elapsed within which it allowed a certiorari to be applied for and allowed, and if allowed every one knew the law as to its effect, and that no authority to issue the bonds or subscribe for stock, could exist until the determination thereon in the court of review.

g. We ask the attention of the court to the following in connection with our point II at p. 44 supra and in addition to authorities cited on p. 77, as to requests 4 and 5 for direction of verdict for defendant.

The act of 1871 took effect on the 12th day of May, 1871, and was in force on the very day on which the county judge made the first order in the proceedings, by which order he took jurisdiction.

Arnold vs United States, 9 Crauch 104.
Mathews vs Zane, 7 Weaton 164.

The effect of the amendment made by the act of 1871, was that the part of the former statute which was retained and re-enacted continued in force from the first enactment, and the new provisions incorporated became operative from the time the amendatory statute took effect.

Ely vs Holton, 15 N Y 595–598.
Moore vs Mansert, 49 N Y 332–335. Same case.
5 Lansing 173.
United States vs Tynen, 11 Wall. 88.
Daviss vs Fairbain, 3 How. 636.

This being so, the petition upon which the county judge acted when he made the order of the 12th day of May, 1871, failed to show that the application to him was made by a majority of the taxpayers of the town *exclusive of those taxed for dogs or highway tax only*, and consequently the county judge never obtained jurisdiction, the whole proceedings were *coram non judice* and void.

Wilson vs Town of Canadea, 15 Hun. 218.

In the case cited the petition was almost precisely like the one at bar, was dated previously to the act of 1871, as the petition here is, but was not acted upon by the county judge until after the passage of that act, as was the case in the one at bar.

And the court held that the defect being jurisdictional the proceedings must be held to be void even against a holder for value of the bonds issued by the commissioner appointed by the judge. See

People ex. rel. Green vs Smith, 55 N Y 135,

in which the Court of Appeals of New York, reversed a similar proceeding for like defect in the petition.

See the petition in this case at p. 21, supra in 1st assignment of error, and the statute of 1871 below, middle of p. 7 supra.

The statute required the petition to be filed as a part of the record, (middle of p. 8, hereof,) hence parties dealing in the bonds had notice therefrom of the want of jurisdiction and authority in the county judge to appoinf commissioners.

4 Otto 429–432.

h. The bonds and coupons were and are therefore utterly void, because when signed and handed over to Biddlecom for Railroad Co, there was no authority or power to sign

or issue the same. So would they have been if signed and delivered at their date February 15, 1872.

The Clayton and Theresa Railroad Company, as shown by evidence of Biddlecom, see point 9, p. 61, had full notice of and were engaged by its employed counsel in defending the writ of certiorari and proceedings, and knew the utter want of authority and power of Strough, Gates and Folts to act as commissioners, either in signing, procuring registered or delivering the bonds, or in subscribing for or receiving certificate or script for its stock in the name of the town of Orleans.

The whole transaction was the fraudulent and void acts of the Railroad Company, its officers, and Strough, Gates and Folts.

Smith vs. Sac county. 11 Wall 139–149.
Thomas vs City of Richmond. 12 Wall 349–356

7. Hence, the subscription for stock was void and not binding on the town, nor was the act of those parties in receiving the script of any validity as against the town. The town never has received or authorized receipt of the scrip and is not bound to offer to return it. It successfully repudiated, by procuring reversal of the whole proceedings, the whole thing and the Railroad company being one of the fraudulent conspirators cannot allege its fraudulent and unauthorized act as binding or an estoppel on the town.

In Weismer vs. village of Douglas where the corporation officers had paid a years interest on bonds and voted on the stock, the receipt of the stock created no estoppel because void for want of authority to subscribe.

64 N Y 91–105–6.
Horton vs Town of Thompson. 71 N. Y. at p. 524.

" The town has no power to recognize these bonds or in any manner to raise money to pay them."

People vs Mead 36 N. Y. at p. 230.

Being void for want of authority by consent of the taxpayers, the Legislature could not validate them.

71 N. Y. at 525.

The evidence of Folts on p. 63 hereof shows an offer of surrender of that scrip, and demand of Biddlecom, the Treasurer of the C. & T. R. R. Co., who had them in his control after decision of Court of Appeals.

5. The evidence showed that neither the U. & B. R. R. R. Co., or Isaac Maynard, was a bona fide holder of the bonds. It apeared that Maynard had before receiving them actual notice that the Court of Appeals had reversed the proceeding in which the persons issuing them were appointed commissioners, thereby in effect declaring they never had any authority to issue the same or subscribe for or receive stock and that company through the knowledge of Maynard, Graham and West had like notice. See the evidence in point 9 and reference thereto in point 11.

That the company was chargeable with their knowledge, its officers.

p. 65 to 70

See, Hoover as assignee vs. Wise, 1 Otto, 308–310 and cases cited.

Griffith vs Griffith, 9 Paige 315.
Ingalls vs Morgan, 10 N. Y. R. 178–184 and cases cited.
Story on Agency, sec. 140.
The Distilled Spirits, 11 Wall. 356–366–7.
34 N Y at p. 84.

a. That such was the effect of the decision of Court of Appeals, see

52 N. Y. 296.
60 N Y 454, cited above.
13 Hun. 582, 588.

6. The town is not estopped by the bond, or anything thereon or therein recited, for

1. Strough, Gates and Folts were not its officers or agents for any such purpose, and it could not be bound by their statements or acts beyond or different from those authorized by the laws of 1869 and 1871.

Lorillard vs The Town of Monroe, 1 Kernan 392, decided in 1854, opinion per Denio, J.

The Town of Gallatin vs Loucks, 21 Barb. 578, 580.

People ex rel. Martin vs. Brown, 55 N. Y., 180, 187–8.

Sheboygan County vs. Parker, 3 Wall. 93–96.

Horton vs Town of Thompson, 71 N. Y. 513–521.

2. Commissioners when duly appointed are, by those acts, made special agents only for the purposes therein expressed in section two of act of 1869, "to be commissioners for the purposes hereinafter named"—and by section four to issue the bonds as described and prescribed; by section five, to subscribe for stock and pay therefor in the bonds, or may negotiate the bonds at par and pay the money received therefor for the stock, as directed in the petition, &c.

They *are not empowered to decide or determine as to any matter or thing requisite under the law to be done or made to appear, prior to or as a condition precedent to the grant of power to them, or to certify in any manner whether any such things have or have not been done*, but the statute provides the county judge should determine whether such condition precedent had been complied with; hence, any recital in the bonds in relation thereto is null and void, and every person receiving them was by the recital referred to the statute which he was bound to examine, and would find it did not authorize them to make such recital, and hence that it was not evidence of the facts stated or binding on the town.

a. It is only in those cases where the same county, city, town, or other officers, board of commissioniers, or county court, or other person or persons, who were by the law authorized to issue or cause to be issued the bonds, and subscribe for stock of the railroad company, were *also by the same law or legislative authority constituted a tribunal to determine, decide and declare whether* the conditions precedent, and steps preliminary and prerequisite to their authority to subscribe and issue bonds had been complied with and taken, that the courts have held any recital, representation or statements as to such compliance contained in the bonds, could operate as an estopel.

In such case the recital in the bond is held an announcement of the decision, perhaps it might more properly be termed a duplicate of it, or of the record.

Humbolt Township vs. Long, 2 Otto, 642–8.
Town of Venice vs. Murdock, 2 Otto, 944.
Commissioners of Knox County vs. Aspinwall 21 How. 539–543–4–5.
Commissioners of Douglass Co. vs Bolles, 4 Otto, 104.
Town of Coloma vs. Eaves, 2 Otto, 484–490.
Marcy vs. Township of Oswego, 2 Otto, 637.
County of Warren vs Marcy, not reported.

This court has not held any other rule as to recitals being an estopel.

In Whiteside vs. United States 3 Otto, 247, the Court at page 257, says: "Individuals as well as Courts must "take notice of the extent of authority conferred by law "upon a person acting in an official capacity and the rule "applies in such a case that ignorance of the law furnishes "no excuse for any mistake or wrongful act."

Delafield vs. State of Illinois, 26 Wend. 192, 221.
Thomas vs. City of Richmond, 12 Wall. 349, 356.

Weismer vs Village of Douglass, 64 N. Y. 91–97–106.
Town of South Ottawa vs Perkins, 4 Otto 260, 262, and cases cited.
McDonald vs. Mayer, 68 N. Y. 23–27.
Whiteside vs United States, 3 Otto at p. 257.
McClure vs Township of Oxford, 4 Otto 429.
Marsh vs Fulton County 10 Wall, 676–683.
Floyd Acceptance, 7 Wall, 676.
Commissioners of Kings County vs Aspinmatt, 21 How 539–543.
71 N. Y. at pp 523–4

7. There being an entire want of authority to issue the bonds, they were utterly void, and not merely voidable. There can be no bona fide holding of paper thus void because made without capacity or authority to make it.

Floyd, Acceptances, 7 Wall. 666.
Marsh vs Fulton Co. 10 do 676.
Loan Association vs Topeka, 20 do 655.
St. Joseph Township vs Rogers, 16 do at p 659
Township of E. Oakland vs Skinner, 4 Otto 255–8.
Barnes vs Town of Lacon, 17 Alb, L. J. 92.
McClure vs Oxford, 4 Otto 429.
Dillion on Municipal Corporation, secs. 108–426
Dillion on Law of Municipal Bonds, secs. 7–19–23.

8. That plaintiff below could on receiving notice through service of the answer in this action have called on Maynard or the Utica & Black River Railroad Co., to whichever he had given his notes in purchase for the bonds, and in whose possession they still remained not negotiated or transferred to any bona fide holder, to rescind the purchase, surrender the notes and have enjoined a transfer thereof to prevent their coming to the hands of a

bona fide holder, as stated in point I. on p. 42 hereof, and should have done so. See the following :

Story's Eq. Jwr. §§ 906-907.
Chitty on Bills, 13th Ed p 118, margnial 97
Fonblanque on Equity Book 1, chapt 1, § 8, and notes and cases cited.
13 Simons (Eng Chy) 513 Orbaldiston vs Simpson.
Eden on Injunctions chap 14 p 292–295.
Cases cited in 4 Otto top of p 95.
Town of Venice vs Woodruff 62 N Y 462–466
Town of Springport vs Teutonia Savings Bank decided in Court of Appeals Dec. 10, 1878, noted in 18 Alb. Law Journal p 496.

That he was not a bona fide holder by giving his notes.

Freeman vs Dunning 3 Sandf, Chy R. 327.
Harris vs Norton 16 Barb. 264–267.
Spicer vs Walters 65 Barb. 227–231.

We submit therefore that the court below erred in refusing to direct a verdict for defendant, in refusing to submit the case to the jury, upon the several requests therefor, and in directing a verdict forplaintiff, and each thereof. And the judgment should be reversed and a new trial ordered.

LEVI H. BROWN,
Attorney for Plaintiff in Error.

CHAS. A. SHERMAN,
of Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 176.

Town of Orleans,

PLAINTIFF IN ERROR,

Vs.

Nathan E. Platt,

DEFENDANT IN ERROR.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

FRANCIS KERNAN,
Counsel for Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 176.—*October*, 1878.

THE TOWN OF ORLEANS, PLAINTIFF IN ERROR,

vs.

NATHAN E. PLATT, DEFENDANT IN ERROR.

STATEMENT AND BRIEF FOR THE DEFENDANT IN ERROR.

The action was brought in the United States circuit court for the northern district of New York, by Platt, of Chicago, the defendant in error, against the town of Orleans, one of the towns of the State of New York, to recover the interest on $70,000 of bonds, issued on the faith and credit of said town, which became due the 15th of February, 1874, the 15th of August, 1874, and the 15th of February, 1875.

The action was tried at the June term, 1875, of the circuit court, by and before Judge Wallace and a jury. (Folio 85.) The jury, under the direction of the court, rendered a verdict for $7,776.43, the amount claimed. (Folio 340.)

The counsel for the defendant below tendered a bill of exceptions which was duly settled and signed. (Folio 85 to 341.) Judgment was duly entered. (Folios 80 to 83.) The defendant below sued out a writ of error. (Folio 342, &c.)

The declaration extends from page 1 to page 75 inclusive. The answer is on pages 76 to 79.

The bill of exceptions extends from the bottom of page 82 to and including page 200.

The bonds in question were issued under and by virtue of chapter 907 of the laws of New York, enacted in 1869, and the laws amending the same.

These statutes enacts in substance that whenever a majority of the tax-payers of any municipal corporation in this State, whose names appear upon the last preceding assessment roll of said corporation as owning or representing a majority of taxable property in the corporate limits, shall make application to the county judge of the county in which said corporation is situated, by petition verified by one of the petitioners setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire that such muncipal corporation shall create and issue its bonds to an amount named in such petition, (not exceeding 20 per cent of the amount of taxable property as shown by said assessment roll,) and invest the same, or the proceeds thereof in the stock of such railroad company in the State of New York, as may be named in the petition, it shall be the duty of the county judge to give notice by publication in a newspaper in the county that on the day named, which shall not be less than ten nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in the petition as to the number of tax-payers joining therein, and as to the amount of taxable property represented by them. The act declares that the words "municipal corporation" shall include "any city, town or incorporated village." (Chapter 907 of the laws of 1869, § 1, found Vol. 2 of laws of 1869, page 2303. Amended by act of May 12, 1871, chapter 925, found Vol. 2 of laws of that year, page 2115.)

The second section of the act declares that it shall be the duty of the judge at the time and place named in the notice to proceed to take proof as to the allegations in the

petition; "and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax-payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax-payers of said municipal corporation as shown by the last preceding tax list or assessment roll, and do represent a large majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record. And such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State." On making his final determination the judge "shall forthwith publish notice thereof for three weeks, at least once in each week in the same newspaper" in which notice of hearing was published. (Section 2 of act of 1869, Vol. 2, p. 2304; ditto of act of 1871, p. 2117.)

Section three of the act of 1869, declares that if the county judge shall determine that such petitioners do represent a majority of such tax-payers and a majority of the taxable property, "it shall be his duty forthwith to appoint and commission three persons who shall be free-holders, residents and tax-payers, within the corporate limits of such corporation to be commissioners for the purposes hereinafter named." (Section 3 of laws of 1869, vol. 2, p. 2305.)

Section four of the law of 1869 as amended, declares that it shall be the duty of the commissioners, "with all reasonable dispatch," to cause to be made and executed the bonds of such municipal corporation, attested by the seal of the corporation, if it have a common seal, and if not, then by the individual seals and signatures of the commissioners. The bonds to have interest warrants, corresponding in number and amount with the several payments of interest. The commissioners are authorized to issue the bonds payable at any time they may elect less than thirty years, but not to make more than ten per cent of the principal of the whole

amount of bonds issued payable in any one year. (Laws of 1869, chapter 907, Sec. 4, vol. 2, p. 2305; Laws of 1871, chapter 283, vol. 1, p. 558; Sec. 1, chapter 925 of laws of 1871; Sec. 6, vol. 2, p. 2119.)

The bonds were to be registered in the office of the county clerk of the county in which the town issuing them was. (Chapter 907 of laws of 1869, Sec. 8, vol. 2 of laws, p. 2308.)

On the trial, the plaintiff put in evidence the above-mentioned statutes of N. Y., (folio 85;) and proved the organization in February 1871, of "The Clayton and Theresa Railroad Company" as a corporation for the purpose of constructing and operating a railroad from Clayton on Lake Ontario, through the town of Orleans and other towns of the county of Jefferson, to a point on the Black River and Morristown railroad, a distance of about 20 miles. (Folios 86 to 93.)

The petition of the tax-payers of the town of Orleans to the county judge of Jefferson county, that bonds be issued by the town to the amount of $80,000, to enable it to take and pay for that amount of stock of the said Clayton and Theresa Railroad Company, and that three commissioners be appointed for that purpose, was read in evidence. It was verified on the 3d day of May, 1871, before the county judge, and on the same day presented to him. (Petition, folios 95 to 103; verification, folio 103; date of presentation to county judge, folio 114.)

The county judge, on the 12th of May, made an order that notice be published that on the 5th of June then next he would proceed to take proof of the facts. (Order notice and proof of publication, folio 104 to 107.)

A hearing was had by the county judge of the parties favoring and opposing the application, and proofs were taken by him. On the 1st of July, 1871, he made an order appointing George H. Strough, Sam'l W. Gates, and Simon Foltz, commissioners for the town, to issue bonds to the amount of $80,000, and to take stock to this amount in the

railroad company. (Folio 112.) This was published for three weeks in the same three papers in which the notice was published. (Folio 118 to 121.)

On the 1st of July the county judge also made and signed his judgment and decision in the matter which, with the proceedings before and action taken by him, was filed as a judgment record in the clerk's office of Jefferson county on the 3d of July, 1871. (Folio 93 to 121.)

The commissioners took the oath of office, which was duly filed in the clerk's office July 27th, 1871. (Folio 113.)

It was conceded on the trial that the plaintiff was before and at the time the suit was commenced, and is a citizen of the United States and of the State of Illinois, and a resident of Chicago; and that the defendant was one of the towns of the county of Jefferson, New York. (Folio 121.)

The plaintiff proved that on the 3d of April, 1872, the commissioners, on behalf of the town, subscribed for 800 shares of the capital stock of the Clayton, &c. Railroad Company, amounting to $80,000. (Folio 121 to 123½.) The commissioners issued to the Clayton, &c. Railroad Company, on the 3d or 4th of April, 1872, 160 bonds of $500 each, in payment for the stock, and the railroad company made and issued to the commissioners scrip for the stock, and this scrip is still held by the town. (Folio 127 to 129.)

The bonds were numbered from 1 to 160. The one hundred and forty bonds in suit, were numbered from 21 to 160 inclusive. On the face of each bond was a certificate that it was registered in the clerk's office of Jefferson county. (Folios 123½ to 127.)

The 140 bonds and the coupons were produced and read in evidence. One of the bonds and one of the coupons are set out. (Folio 124 to 127; 129 to 131.)

The amount of the coupons and interest to the time of the trial was $7,776.43.

The plaintiff rested at folio 131, (p. 102.)

The counsel for the defendant thereupon offered and (after objection by plaintiff's counsel) read in evidence a duly authenticated copy of the judgment record in the case of The People on the relation of W. B. Erwin and others against A. C. Lawyer, county judge of Jefferson county, and Jacob Stears, clerk of said county. The same extends from folio 131 on page 102, to folio 294, page 182.

From this copy of record and papers it appeared that in September, 1871, an application was made to the supreme court of New York for a writ of *certiorari* to review the proceedings and decision of the county judge of Jefferson county, in the matter of bonding the town of Orleans. The writ was allowed, and the order therefor filed September 30, 1872. (Folio 136 to 138.)

The writ was served on Stears, the clerk, and he made a return thereto. (Folio 142, 144 to 184.)

It was also served on Judge Sawyer, and his return is set out. (Folios 184, 185–6, &c., to folio 278.)

In June, 1872, the supreme court of New York, at a general term thereof, announced its decision affirming the judgment and determination of the county judge. (Folios 278 to 286.)

In July, 1872, the relators appealed from the order and judgment of the supreme court at general term to the court of appeals. (Folios 140, 141.)

The last of February, 1873, the court of appeals reversed the decision and judgment of the county judge and of the supreme court. (Folios 138 to 140.) In March following, the remittitur from the court of appeals was filed in the supreme court and the judgment of the court of appeals made the judgment of the supreme court. (Folios 286 and 287.)

The defendant's counsel gave testimony, which is set out from folio 294, page 182, to folio 334, page 198.

This evidence proved that the Clayton and Theresa Railroad Company made a contract with the Utica and Black

River Railroad Company on the 26th of February, 1872, which is set out, Exhibit A, folios 300 to 306.

Another contract was made between the same parties, dated the 31st of May, 1873, which is set out, Exhibit B, folios 306 to 310.

At the time this contract was made the Clayton and Theresa Railroad Company deposited with Isaac Maynard, of Utica, the $70,000 of bonds in question as collateral security for the performance by that company of the above contracts, and authorized Maynard to sell the bonds and place the proceeds with the Utica and Black River Company, (folios 296½, 297, 300, 310, 311.)

The defendant proved, by Mr. Maynard, that on the 4th of February, 1874, he sold the bonds to the plaintiff at Chicago, (folios 313 to 318.)

Prior to the trial the defendant had examined the plaintiff as a witness, and at the trial the defendant read his testimony thus taken in evidence, (folios 326 to 334.)

He was at the trial, and was called and gave testimony, (folio 334.)

The testimony given by the defendant proved that the plaintiff was a *bona fide* purchaser and holder of the bonds for value parted with.

The evidence was closed at folio 334½, page 198.

The counsel for the defendant took several exceptions to the admission and exclusion of evidence, and, at the close of the case, he insisted and asked the court to rule and decide; and the court did rule and decide, and exceptions were taken as stated at folios 334½ to 340.

The questions raised and errors assigned will be referred to separately in the following brief:

The Clayton and Theresa Railroad runs through the centre of the town of Orleans. There are two stations or depots in that town, and this is the only railroad that extends into or through it. The construction of the road was

commenced in 1872, and it commenced to be operated in October, 1873, (folio 325.)

The court of appeals reversed the adjudication of the county judge and of the supreme court of New York, affirming it on the ground that the county judge erred in refusing to allow persons who had signed the petition, which was presented to him, to withdraw or revoke their signatures on the hearing before him. (See the case reported, People *ex rel.* Irwin *vs.* Sawyer, County Judge, 52 New York Reports, pp. 296–303.)

The decision of the county judge and of the supreme court in this case was in accordance with the uniform decisions of county judges and the supreme court prior to the above reversal by the court of appeals. (See *In re* Town of Greene, 38 Howard's Practice Reports, pp. 515–535.)

First. The court below did not err in refusing to rule and decide, as requested, by the defendant below, and in directing a verdict. (Pages 199, 200.) On the uncontradicted evidence in the case the plaintiff below was entitled to recover upon the bonds.

I. There is no dispute as to the following facts:

The Legislature of New York, by a valid law, authorized the town of Orleans to aid in the construction of a railroad through the town by making and issuing its negotiable time bonds in payment for stock in the railroad corporation.

This law provides that on an application of the tax-payers of the town to the county judge of the county in which the town is situated, a hearing shall be had and proofs taken by and before him; "and if it shall appear satisfactorily to him" that the original petitioners and such other tax-payers of the town as may appear before him on the hearing, and express a desire to join in the petition, representing a majority of the tax-payers and of the taxable property, as

shown by the last assessment roll of the town, he shall so adjudge and determine and cause the same to be entered of record; and such judgment and the record thereof shall have the same force and effect as other judgments and records of courts of record of the State. (Laws of 1869, chapter 907, vol. 2, p. 2303, sections 1 and 2, as amended; May 12, 1871, chapter 925, vol. 2, page 2115, sections 1 and 2.)

Section three of the same law declares that if the judge shall so adjudge and determine, "it shall be his duty forthwith to appoint and commission" three residents and taxpayers of the town to be commissioners for the purposes of the act; who shall hold their offices for five years, and till others are appointed. (Laws of 1869, vol. 2, p. 2305, sec. 3.)

The foregoing provisions of the law were complied with. (Folio, 95; pet., &c.; notice of hearing, folio 104 to 107; adjudication and appointment of commissioners, July 1, 1871, folio 112 to 118.)

The judge immediately caused his adjudication and appointment of commissioners to be published in the county papers, as required by the law of 1871, amending the law of 1869. (Folio 114 to 120, laws of 1871, vol 2, p. 2117, sec. 2.)

The judge issued his commission to the three commissioners, and they took and filed their oath of office. (Folio 112, 113.)

The law authorized and required the commissioners, "with all reasonable dispatch," to subscribe in the name of the town for $80,000 of stock, and make and issue bonds to that amount in payment therefor. (Laws of 1869, vol. 2, p. 2305, secs. 4 and 5; chapter 283, of the laws of 1871, vol. 1, page 558, sec. 1.)

On the 2d of April, 1872, the commissioners subscribed in the name of the town for the $80,000 of stock in the

Clayton and Theresa Railroad Company, and delivered to that company the bonds in payment for, and received scrip for the stock in the name of the town. (Subscription for stock, folio 121, 122, 123; bonds issued for stock, folio 123½ to 127; scrip for stock, folio 127, 128.)

The stock has been and is owned by the town, and the scrip, therefore, is held by the commissioners, and they have and do represent the town at all meetings of the stockholders. (Folio 128, laws of 1869, vol. 2, p. 2306, Sec. 5.)

The bonds are payable to bearer, and *recite* on their face, that they were issued by virtue of and according to chapter 907 of the laws of 1869, and the several laws amendatory thereto. (See copy of bonds, folios 124, 125.)

On the face of each bond was a certificate of the clerk of Jefferson county that the bond was registered in the clerk's office in that county April 3, 1872, as authorized by the law. (Folio 126, laws of 1869, vol. 2, p. 2308, Sec. 8.)

The railroad extended through the town of Orleans, and was constructed and put in operation in 1872 and 1873. (Folio 325.)

The bonds in question, were delivered by the Clayton and Theresa Railroad Company to Isaac Maynard as security for obligations and indebtedness of that company to the Utica and Black River Railroad Company; and in May, 1873, the former company authorized Maynard to sell the bonds, and pay over the proceeds to the last-named company. (Folios 297, 300, 310.)

On the 4th of February, 1874, Maynard sold the bonds to the plaintiff at Chicago where the later resided. (Test. of Maynard, folios 314 to 317; Test. of Platt, 324 to 335.)

In September 1871, after the commissioners had been appointed, commissioned, and entered upon the duties of their office, on the application of certain individuals, a writ of *certiorari* was granted by the Supreme Court directed to and served on the county judge and the county clerk to

review the proceedings before and adjudication by the county judge. (Folios 136, 137.)

In June 1872, the Supreme Court affirmed the decision and adjudication of the county judge. (Folios 278 to 286.)

An appeal was taken from this judgment to the court of appeals, by which court the judgment of the county judge and the supreme court was reversed in February, 1873, (Fol. 138, &c.)

The town of Orleans was not, nor were its commissioners, made parties to this proceeding; nor was the *certiorari*, or any notice of the same, served on the commissioners, or any officer of the town.

The plaintiff below purchased the bonds in entire good faith. He had no knowledge, notice, or suspicion that they had not been issued in accordance with the law, or that they were for any reason claimed to be invalid, or that any legal proceedings had been taken to review or reverse the adjudication of the county judge.

Test of Maynard, fols. 314, 315, 318.
Test of Platt, fols. 326, &c., 329, &c., 332, 334.
Recitals in bond, fols. 124, 125.
Certificate of County Clerk on face of bond, fol. 126.

As to the fact that the plaintiff below was a *bona fide* holder, as last above stated, there was no question for the jury. The testimony as to this was all from witnesses called by the defendant below, and it was positive and uncontradicted.

Grand Chute *vs.* Winegar, 15 Wallace, 355, 368–9.
Murray *vs.* Lardner, 2 Wallace, 110, 121.
Cromwell *vs.* County of Lac, 6 Otto, 51, 58, 60.

II. According to the uniform and often repeated adjudications of this court, the plaintiff below was a *bona fide* purchaser and holder of the bonds for the value parted

with, and was entitled to recover [their amount from the defendant, notwithstanding the fact that the preliminary proceedings required by the statute for their issue may have been so defective and erroneous that on a direct proceeding they were or would have been reversed, and the commissioners enjoined from issuing the bonds.

Com'rs of Knox Co. *vs.* Aspinwall, 21 Howard, 539, 545.
Mercer County *vs.* Hackett, 1 Wallace, 83, 92, 93, &c.
Lee County *vs.* Rogers, 7 Wallace, 181.
City of Lexington *vs.* Butler, 14 Wallace, 283.
Grand Chute *vs.* Winegar, 15 Wallace, 355, 368, 372.
Lynde *vs.* The County, 16 Wallace, 7, 13.
St. Joseph Township *vs.* Rogers, 16 Wallace, 645.
Town of Coloma *vs.* Eaves, 2 Otto, 484.
Marcy *vs.* Township of Oswego, 2 Otto, 637.
Com'rs of Douglas Co. *vs.* Bolles, 4 Otto, 104–8–10.
Com'rs of Johnson Co. *vs.* January, 4 Otto, 202.
Cromwell *vs.* County of Sac, 6 Otto, 51, 60.
Township of Rock Creek *vs.* Strong, 6 Otto, 271, 278.
San Antonio *vs.* Mehaffy, 6 Otto, 312, 314.
The County of Warren *vs.* Marcy, decided last term and not reported.

III. The statute conferred authority on the town to issue, by its commissioners, these bonds on certain preliminary proceedings being had. The bonds made and issued by the commissioners state on their face that they were made and issued by virtue of, and according to, the statute which it referred to, (folio 124.)

The plaintiff was not bound, at his peril, before purchasing the bonds, to examine the records in the clerk's office

of Jefferson county. He could safely act on the statute and the recitals in the bond.

Com'rs of Knox Co. *vs.* Aspinwall, 21 Howard, 539.
Moran *vs.* Com'rs, 2 Black, 722–732.
Mercer Co. *vs.* Hackett, 1 Wallace, 83–93.
City of Lexington *vs.* Butler, 14 Wallace, 283.
Grand Chute *vs.* Winegar, 15 Wallace, 356.
Lynde *vs.* County, 16 Wallace, 7.
St. Joseph Township *vs.* Rogers, 16 Wallace, 644.
Town of Coloma *vs.* Eaves, 2 Otto, 490, 491, &c., per Strong, J.
Com'rs of Douglas Co. *vs.* Bolles, 4 Otto, 104.

IV. The plaintiff below resided at Chicago and purchased the bonds there. He had not, *in fact*, any knowledge or notice of the suit by *certiorari* or of the proceeding therein, (folios 334, 332.)

The proceeding by *certiorari* was not, *in law*, such notice as would defeat the plaintiff's recovery on the bonds. The plaintiff was not chargeable in law with notice of this. In the case at bar the suit or proceeding was not against the town or its commissioners. Neither the holder or the maker of the bonds, or the officers acting as its agents, were made, in any way, parties to the suit. It was against the county judge alone. It is settled that a pending suit against a municipality and its officers to restrain them from issuing bonds under a statute of this character is not constructive notice of the alleged invalidity of the bonds to affect a purchaser for value without actual notice.

The County of Warren *vs.* Marcy, decided at the last term of this Court and not yet reported.
Opinion by Justice Bradley, and cases cited.

V. The issuing and service of the writ on the county judge did not revoke the power vested in the commission-

ers by the statute on their appointment and acceptance, or restrain them from exercising this power as commanded by the statute.

Had the writ been served on the county judge *before* he made his adjudication or appointed the commissioners, its legal effect might have been to stay all further proceedings by him; but he had fully executed the power conferred on him in July, and the commissioners then accepted their offices. The *certiorari* was not granted till the last of September. The town was not, nor were the commissioners, made parties to the proceedings; nor was the writ or any notice thereof served on either.

It is believed that there is no case which holds or intimates that the *certiorari* restrained the commissioners from exercising the power conferred on them by the statute, or that they were guilty of a contempt of court in doing so.

Carr *vs.* Shephard, 2 Johnson's Cases, (N. Y.,) 27.
Blanchard *vs.* Myers, 9 Johnson's R., (N. Y.,) 66.
Payfer *vs.* Bissell, 3 Hill's R., (N. Y.,) 293.
In re Conover *vs.* Develin, 26 Barb., (N. Y.,) 429.

VI. But even had the commissioners acted erroneously or in violation of their duty in subscribing to the stock and issuing the bonds while the *certiorari* proceding was pending, this would not be a defense as against the plaintiff. The loss, if any, must fall upon the town, whose agents the commissioners were, and not on the innocent purchaser of the bonds.

Farmers, &c., Bank *vs.* Butchers, &c., 16 N. Y. R., 125, 133, &c.
New York and New Hampshire Railroad Company, *vs.* Schuyler, 34 N. Y. R., 30.
Grand Chute *vs.* Winegar, 15 Wallace, 356.

VII. The fact that the plaintiff purchased the bonds for

less than their par value is no defence. In February, 1874, almost all railroad and town and county bonds could be purchased for less than their par value.

Mercer County *vs.* Bocket, 1st Wallace, 83, 93.

VIII. When these bonds were issued for the stock taken by the town, they were legal and valid according to the uniform decisions of county judges, and the supreme court of the State of New York. The question upon which the court of appeals reversed the adjudication of the county judge of Jefferson county in 1873, had been uniformly decided as the county judge of Jefferson county decided it. (See 52 N. Y., 296–303.)

In re Town of Green, 38 Howard's N. Y. Practice Reports, 515, 535.

Memoranda of decisions of Supreme Court, folios, 281, 282.

People *vs.* Mitchell, [illegible] N. Y. R., [illegible]

The bonds were issued in April, 1872, to aid in building the road. The road was constructed during 1872 and 1873, and put in operation. During all this time the bonds were held by the Clayton and Theresa Railroad Company, or the the Black River Road, and the stock by the town. Neither the tax-payers or the town took any steps to prevent the bonds being negotiated by the railroad company, or to return to it the $80,000 of stock. It is not till September, 1874, after the plaintiff had purchased the bonds in good faith that he learned that there was claimed to be a defense.

Justice and the rules of law applicable to commercial paper require that the bonds should be held valid in the hands of the plaintiff.

Olcott *vs.* Supervisors, 16 Wallace, 678, 690, &c.

Mercer Co. *vs.* Hacket, 1 Wallace, 83–93.

Second. The court correctly refused to direct a verdict in

favor of the defendant below, on the ground stated in his first request at folio 334–5.

The plaintiff, on the 4th of February, 1874, had without notice purchased the bonds and given his negotiable notes for their price, payable in the city of New York. (Folios 315 to 317.) These notes were given to parties residing in the State of New York. The defendant below, and not the plaintiff, was in fault for not preventing the bonds being negotiated in February, 1874. On receiving the defendant's answer in September, 1874, the plaintiff was not bound to repudiate the validity of the bonds and attempt to reclaim his negotiable notes given for them; or to attempt to avoid payment of his notes. The plaintiff below was entirely responsible. Three of the notes were paid at maturity before the trial, and the fourth since. (Folio 315, 316.) A responsible party who gives negotiable notes on time for property, is as clearly a purchaser for value parted with as one who pays money or parts with property.

Grand Chute *vs.* Winegar, 15 Wallace, 355, 368.

Third. There was no material error in the rulings of the court excepted to by the defendant below, as to the admission or exclusion of evidence.

1. The evidence objected to and excepted to at folios 122 and 123 was properly admitted. Indeed, there was then no evidence before the court that any *certiorari* had been issued. The adjudication of the county judge had been read in evidence, (folio 114.)

2. The bonds were not void, on the ground stated at folio 124. The law of 1871, chapter 924, amends section four of the law of 1869, and authorizes the commissioners to make the bonds payable at any time they may elect less than thirty years.

Laws of 1871, Vol. 2, p. 2119, Sec. 6.

3. The coupons were properly admitted in evidence although signed by but one of the commissioners. (Folio 130.)

The bonds were signed by all the commissioners, and in terms provided for paying interest on presenting and surrendering the proper coupon annexed. The coupons annexed were numbered to correspond with the number of the bond, and verified by the signature of one of the commissioners. (Folios 124 to 127.)

4. The rulings at folios 298 and 299 were correct. What the parties did or said on the subject named was not evidence against the plaintiff, unless it was proposed to prove that plaintiff below had notice or knowledge of same.

5. The court ruled correctly at folios 300 and 310. The defendant below had given evidence, by the witness on the stand, and read in evidence the paper set out at folio 297. This paper refers to a contract. The plaintiff below had a right to prove what this contract was, and to prove that the Black River Railroad Company, his vendor of the bonds, was a holder of the bonds for value parted with. The evidence allowed was clearly competent.

6. It was clearly competent, in view of the fact that the defendant below proved that the plaintiff gave his notes in payment for the bonds, to show that he was a man of large property, (folio 315.)

7. The question and answer at folio 332 were competent.

Fourth. The judgment below should be affirmed with costs.

FRANCIS KERNAN,
Counsel for Defendant in Error.